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HAROLD E. WILLEY, Clerk

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1954

No. 1

OLIVER BROWN, ET AL., *APPELLANTS*

VS.

BOARD OF EDUCATION OF TOPEKA, SHAWNEE COUNTY, KANSAS ET AL., *APPELLEES*

Appeal from the United States District Court for the District of Kansas.

SUPPLEMENTAL BRIEF FOR THE BOARD OF EDUCATION, TOPEKA, KANSAS, ON QUESTIONS 4 AND 5 PROPOUNDED BY THE COURT

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This supplemental brief is filed in response to the order of this Court directing and requesting further briefs and argument on questions 4 and 5 heretofore propounded by the Court.

In its brief, heretofore filed herein in December, 1953, The Board of Education of Topeka urged that in the event segregation in its elementary schools were held to be unconstitutional, this case should simply be remanded to the lower court with instructions to reverse its judgment and to enter a decree requiring that segregation be terminated "as rapidly as is practicable" by the defendant Board of Education. It was suggested that by such a decree the lower court could retain jurisdiction for enforcement of the decree, and that if a need for

a more specific decree should arise in the future, the lower court would have power to amplify its decree under the general power of an equity court to enforce its decree.

As was pointed out in its brief filed in December, 1953, The Board of Education of Topeka in September, 1953, adopted a resolution to terminate segregation in its elementary schools "as rapidly as is practicable"; and on September 8, 1953, terminated segregation at two of its elementary schools, to wit: Southwest and Randolph Schools.

Since that time, the Board of Education of Topeka has already taken its second far-reaching step or stride toward termination of segregation by adopting the recommendations of its superintendent of schools as set out in the following report which was made on January 20, 1954, and was approved and adopted by the Board of Education on the same date:

SECOND STEP IN TERMINATION OF SEGREGATION IN TOPEKA ELEMENTARY SCHOOLS

I. In implementation of the Board's policy to terminate segregation in elementary schools as soon as practicable, I propose that the second step be taken at the opening of school in September, 1954. The step should be acted upon by the Board at this time in order to enable everybody concerned to make necessary plans for next year.

II. In the second step, I propose that segregation be terminated in the following school districts and that transportation not be provided for Negro children who are affected, but that such child be given the privilege of attending the nearest Negro School if his parents want him to do so. (All pupil accounting is based on the number belonging on October 16, 1953.)

	Negro Children to Integrated Schools	Negro Children to Come from following Schools			
		McKINLEY	BUCHANAN	MONROE	WASHINGTON
1. Central Park	21		16	5	
2. Clay	13		12	1	
3. Crestview	0				
4. Gage	1				
5. Grant (Limited)*	3	3	1		
6. Oakland	0				
7. Polk (Limited)**	3			3	
8. Potwin	0				
9. Quincy	34	34			
10. Quinton Heights	10		5	5	
11. State Street	21			9	12
12. Sumner	7	1	5	1	
	113	38	39	24	12
Randolph	2				
Southwest	8				
	123				

*The limitation suggested at Grant is that three Negro children isolated in the extreme northern part of Grant School district be permitted to attend Grant, while the remainder of the Negro children continue at McKinley.

**The limitation suggested at Polk School is as foliows: Several Negro children in this district live very close to Buchanan School. They should continue at this school. There would not be room for them at Polk and there is plenty of room at Buchanan. However, there are three Negro children now attending Monroe School but residing in the Polk district. I suggest that they be allowed to attend Polk School.

1. It would reduce the enrollments of Negro Schools as indicated.

	From	To
McKinley	127	89
Buchanan	160	121
Monroe	245	221
Washington	292	280
	824	711

2. It would place 123 Negro children in integrated schools.
3. It would leave, in addition to the four schools for Negro children, 12 schools integrated, 2 schools (Grant and Polk) on a basis of partial integration, and 5 schools continuing on a segregated basis (Lafayette, Lincoln, Lowman Hill, Parkdale and Van Buren.)

Thus, by announcing the changes in the spring of 1954, all parties affected had ample opportunity to adjust themselves to the changes before they became effective the following September.

Segregation has been completely terminated in 12 elementary school districts, and partially terminated in two others; and, as of September, 1954, there will remain only four negro schools and five white schools in which segregation is being continued.

The Board of Education has requested the superintendent, and he plans, to make recommendations for the third step toward termination of segregation early in 1955 to become effective in September, 1955. In the meantime, of course, he will have had an opportunity to observe the results and the operation of the second step which became effective in September, 1954. Thus before taking the third step, the board of education will have the benefit of its experiences with the first and second steps.

Board of Education has been carrying out its policy of termination of segregation "as rapidly as is practicable" with full public cooperation and acceptance by both white and negro pupils, teachers and parents.

The administrative problems, which were discussed in the brief filed in December, 1953, are the chief problems with which The Board of Education is confronted; but with practical experience, they are being satisfactorily solved. Their solution, however, cannot be effected "forthwith," but require time for a gradual adjustment.

It is respectfully submitted that The Board of Education of Topeka is in good faith carrying out its adopted policy to terminate segregation "as rapidly as is practicable," and that there is no need at this time for the appointment of a special master or for the Court to undertake to formulate specific decrees directing the particular steps to be taken to terminate segregation in the schools of Topeka.

Respectfully submitted,

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APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS.

SUPPLEMENTAL BRIEF FOR THE STATE OF KANSAS ON QUESTIONS 4 AND 5 PROPOUNDED BY THE COURT.

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STATEMENT.

On May 17, 1954, this Court announced its opinion that racial segregation in public education *per se* is a denial of the equal protection of the laws guaranteed by the

Fourteenth Amendment to the Constitution of the United States. At the same time the Court sought an expression of the views of the parties relative to the specific decrees to be entered in this case and other cases now pending. More particularly, the Court's request is as follows:

> "In order that we may have the full assistance of the parties in formulating decrees, the cases will be restored to the docket and the parties are requested to present further argument on Questions 4 and 5 previously propounded by the court for reargument this term." (*Brown v. Board of Education of Topeka, et al.*, 347 U. S. 483, 495)

The following is respectfully submitted in an effort to comply with that request.

THE QUESTIONS.

Questions 4 and 5 mentioned above, were set forth in the Court's order of June 8, 1953, and are quoted hereafter:

> "4. Assuming it is decided that segregation in public schools violates the Fourteenth Amendment,
>
> "(a) would a decree necessarily follow providing that, within the limits set by normal geographic school districting, Negro children should forthwith be admitted to schools of their choice, or
>
> "(b) may this Court, in the exercise of its equity powers, permit an effective gradual adjustment to be brought about from existing segregation systems to a system not based on color distinctions?
>
> "5. On the assumption on which questions 4(a) and (b) are based, and assuming further that this Court

will exercise its equity powers to the end described in question 4(b),

"(a) should this Court formulate detailed decrees in these cases;

"(b) if so what specific issues should the decrees reach;

"(c) should this Court appoint a special master to hear evidence with a view to recommending specific terms for such decrees;

"(d) should this Court remand to the courts of first instance with directions to frame decrees in these cases, and if so, what general directions should the decrees of this Court include and what procedures should the courts of first instance follow in arriving at the specific terms of more detailed decrees?" (*Brown v. Board of Education of Topeka, et al.*, 345 U. S. 972.)

GENERAL CONSIDERATIONS.

We pause at the outset of these comments to emphasize that we do not approach the present questions as an adversary. Heretofore in the arguments of December, 1952, and upon reargument in December, 1953, we presented as fully as we could the arguments in justification of the statute authorizing certain boards of education in Kansas to provide for the education of Negro children in separate schools of equal facility. The arguments then advanced appeared consistent with the reported decisions of this Court, the Supreme Court of Kansas, and Appellate Courts elsewhere. However, the issue in this case has now been determined *contra* to the position we then urged. We accept without reservation

or equivocation the Court's declaration that "in the field of public education, the doctrine of 'separate but equal' has no place." We assure the Court that the resources of state government will be employed to effectuate the decision in the public schools of Kansas. Hence, the sole purpose of this brief is to supply such information as may assist the Court in finally disposing of the Kansas case.

Of the several cases at bar we suspect that the Kansas case may be least complex. Several considerations point to this conclusion. In earlier arguments we have pointed out that the practice of segregation in public education has never been widespread among the communities of the state. Traditionally, Kansans abhor inequality. Except in the case of the elementary schools in cities of the first class, the statutes of Kansas specifically prohibit school authorities from making distinctions based on race, color or previous condition of servitude. (G. S. 1949, 21-2424) Moreover, we think it is significant that quite apart from the Courts decision of May 17, 1954, and through the normal exercise of local autonomy, an accelerated adjustment from existing segregated systems to a system not based on color distinction has been in progress throughout the state. Indeed, it might well be argued that the instant case is moot by reason of the action of the Topeka Board of Education more fully described in its separate brief filed herein.

Segregation has never existed in Kansas as a matter of state policy. Section 72-1724, General Statutes of Kan-

sas of 1949, which has been declared unconstitutional in the present litigation, purported to permit rather than to require segregated elementary schools in the areas to which it applied. Those segregated systems that have been maintained, have existed by virtue of action of local boards of education. Hence we do not contemplate that the termination of segregation in Kansas will be the occasion for any policy adjustment on a state level. No provision of the Constitution of Kansas is affected by the Court's decision of May 17, 1954. There is no occasion for state legislation to provide for or implement the process of de-segregation. The abandonment of segregated school systems will not require the alteration of any policy established by the State Department of Public Instruction or any other state administrative agency. Emphatically, de-segregation will produce no cultural problem nor will it disrupt an established way of life. In fact, there has been no significant amount of protest on the part of any group of Kansas citizens to the elimination of separate schools. Indeed, the prevailing attitude has been one of approval. Presumably, political party platforms reflect attitudes accepted by their members. Note the statement quoted hereafter from the 1954 platform of the Republican Party of Kansas:

> "We hail the recent historic decision of the Supreme Court of the United States as upholding the traditional position of the Republican Party that there can be no second class citizens under our American form of government." (***)

In view of the foregoing, we cannot, in candor, suggest that *at state level* there are any barriers, legal or

otherwise, to the immediate termination of such segregated public school systems as may exist in Kansas. The problems incident to the de-segregation process will be encountered on the local level only, and will be procedural rather than substantial, pragmatic rather than essential. At the same time, they are problems that obviously cannot be resolved forthwith by resolutions of boards of education or even by decrees of this Court. Time will be required for deliberation, for decision and for adjustment. How much time? We do not presume to say. We suggest only that in those cases where, as in Kansas, responsible state and local officials are proceeding in diligence and good faith to effect the adjustment required by the Court's opinion herein, such efforts should be recognized by this Court and be permitted to proceed with a minimum of judicial direction.

ARGUMENT ON QUESTIONS PROPOUNDED.

The briefs submitted by the several parties and *amici curiae* prior to the December 1953 arguments, reveal little significant divergence of view relative to the principles applicable to Questions 4 and 5. Hence, we discuss the questions somewhat summarily.

> "4. Assuming it is decided that segregation in public schools violates the Fourteenth Amendment,
>
> (a) would a decree necessarily follow providing that, within the limits set by normal geopraphic school districting, Negro children should forthwith be admitted to schools of their choice, or
>
> (b) may this Court, in the exercise of its equity powers, permit an effective gradual adjustment to

be brought about from existing segregated systems to a system not based on color distinctions?"

The assumption stated has now become the established principle of law. The questions go to the power of a court of equity.

We think that a decree providing that, within the limits set by normal geographic school districting, Negro children should forthwith be admitted to schools of their choice, does not necessarily follow the opinion of May 17. On the other hand, we believe that this Court, in the exercise of its equity powers, may permit an effective gradual adjudgment from existing segregated systems to a system not based on color distinctions. The very fact that these questions are now being argued, some seven months after the decision that segregation violates constitutional rights, suggests that the power to postpone compliance does exist.

The decree must seek to reconcile the personal and present interest of the Negro citizen, whose constitutional rights have been violated, with the public interest in safeguarding the integrity of the school system. To illustrate, we call attention specifically to a statement contained in the separate brief of the Board of Education of Topeka submitted prior to the December, 1953, arguments:

> "If this Court should enter an order to abolish segregation in the public schools of Topeka 'forthwith', as suggested in Question 4(a), the Topeka Board would, of course, do its best to comply with the order. *We believe, however, that it would probably require that the regular classes be suspended,*

while the many administrative changes and adjustments are being made, and while the necessary transfers of and reassignment of students and teachers are being made. Important decisions would have to be hurriedly made, without time for careful investigation of the facts nor for careful thought and reflection. Most decisions would have to be made on a temporary or an emergency basis. We believe the attendant confusion and interruption of the regular school program would be against the public interest, and would be damaging to the children, both negro and white alike." (pp. 4-5) (Italics supplied)

We think it cannot be disputed that a court of equity has power to avoid such a consequence.

The reports abound with authority for the proposition that it is the duty of a court of equity "to strike a proper balance between the needs of the plaintiff and the consequences of giving the desired relief." (*Eccles v. Peoples Bank*, 333 U. S. 426, 431.)

> " . . . equity will administer such relief as the exigencies of the case demand at the close of the trial." (*Chapman v. Sheridan-Wyoming Coal Co., Inc.*, 338 U. S. 621, 630.)

> "The essence of equity jurisdiction has been the power of the Chancellor to do equity and to mould each decree to the necessities of the particular case. Flexibility rather than rigidity has distinguished it. The qualities of mercy and practicality have made equity the instrument for nice adjustment and reconciliation between the public interest and private needs as well as between competing private claims." (*Hecht Co. v. Bowles*, 321 U. S. 321, 329-330.)

> "It is familiar doctrine that the extent to which a court of equity may grant or withhold its aid, and

the manner of moulding its remedies, may be affected by the public interest involved." (*U. S. v. Morgan*, 307 U. S. 183.)

"A court of equity has discretion, in the exercise of jurisdiction committed to it, to grant or deny relief upon performance of conditions which will safeguard the public interest." (*Securities Exch. Comm. v. U S R & Imp. Co.*, 310 U. S. 434, Syl. 7.)

"In short, the judicial process is not without the resources of flexibility in shaping its remedies . . ." (*Addison v. Holly Hill Co.*, 322 U. S. 607, 622.)

We presume that no principle of equity jurisprudence is more familiar than that illustrated by the foregoing statements. It would seem that the authorities cited would preclude further argument on Question 4. However, this proposition has been discussed at some length in the supplemental brief for the United States on reargument filed herein prior to the arguments in December, 1953. We call the Court's attention specifically to the discussion and authorities contained in that brief on pages 152 to 167, inclusive, and suggest that we are in substantial agreement with the views expressed therein.

Question 5 assumes that 4(b) has been answered in the affirmative. The Court then inquires:

"(a) should this Court formulate detailed decrees in these cases;

"(b) if so what specific issues should the decrees reach;

"(c) should this Court appoint a special master to hear evidence with a view to recommending specific terms for such decrees;

"(d) should this Court remand to the courts of first instance with directions to frame decrees in these cases, and if so, what general directions should the decrees of this Court include and what procedures should the courts of first instance follow in arriving at the specific terms of more detailed decrees?"

This question compels our attention to the inherent limitations on the judicial power. We doubt that the Court contemplates the judicial development of a plan for the de-segregation of the schools of Kansas or any other state. If such action is contemplated, we doubt that it is legally or practically feasible. The Court may determine, as it has determined, that the segregated school system heretofore maintained in Topeka, Kansas, violates the Constitution of the United States. It may determine whether a gradual adjustment to a system not based on color distinctions is authorized. However, it cannot tell the Topeka Board of Education what non-segregated school system will be substituted for the one heretofore maintained, nor can it prescribe the course to be followed in effecting the substitution. These are determinations that must necessarily be made with reference to local conditions—conditions that were not germane to the question of whether segregation *per se* is unconstitutional and hence are not reflected by the record now before the Court. They are determinations that must be made by local officials who are familiar with local conditions and who are responsible for local educational policy and for the general administration of the school system. We urge that those officials be given the

maximum latitude consistent with the rights of appellants.

We emphasize that in the exercise of appellate jurisdiction, the Court's considerations are limited by the record forwarded from the court of original jurisdiction. The present questions have appeared in the case since the trial in the court below. Hence, before any detailed decree could be framed, additional evidence would probably be required. We suggest that the District Court is the proper forum to hear evidence and determine facts.

> "The framing of decrees should take place in the district courts rather than in the appellate courts." (*International Salt Co. v. United States*, 332 U. S. 392.)

A review of the precedents would indicate that this Court, as a matter of policy, has heretofore refused to frame detailed decrees in cases involving segregation in education. In those cases where school facilities have been held unequal and where administrative action has been required to secure equality, the Court has not attempted to determine precise standards to be observed by the parties in order to finally dispose of the case. Rather, the Court has been content to remand the case to the lower court for further proceedings consistent with and in conformity with its opinion. (*Sipuel v. Board of Regents*, 332 U. S. 631; *Missouri ex rel. Gaines v. Canada, Registrar*, 305 U. S. 337, and *Henderson v. United States*, 339 U. S. 816.)

Thus, we answer part (a) of Question 5 in the negative. This answer obviously precludes comment on part

(b). Similarly, we answer part (c) in the negative. We believe that the only order necessary in the present case, indeed, the only one justified by the circumstances, is one reversing the judgment of District Court, and remanding the cause to said court with directions to enter an appropriate decree. We suggest further that the District Court be directed to retain jurisdiction of the cause until such time as the maintenance of segregated schools by Appellee Board of Education is finally terminated. Implicit in such an order would be the power of the District Court upon appropriate motion by any of the parties to deal with special problems arising during the transition period.

Finally, we suggest that the decrees of both this Court and the District Court should provide for a minimum of judicial control.

> "It is in the public interest that federal courts of equity should exercise their discretionary power to grant or withhold relief so as to avoid needless obstruction of the domestic policy of the states . . . " *(Alabama Pub. Serv. Comm. v. Southern Ry. Co.,* 341 U. S. 341, 351.)

Wherever responsible state and local officials are proceeding in good faith to make the adjustments required by the Court's opinion of May 17, 1954, we suggest that their efforts be recognized and that they not be hedged by detailed judicial orders.

CURRENT DE-SEGREGATION TRENDS.

In its separate brief, the Topeka Board of Education has advised the Court of its action to terminate its segregated schools. Hence, we comment on that situation only briefly. Since September, 1953, Topeka has moved from universal segregation in its elementary schools, to a system consisting of 12 integrated schools, two partially integrated, five schools maintained exclusively for white students and four attended only by Negroes. One hundred and twenty-three Negro students now attend mixed elementary schools. We deem this significant progress.

In other communities of Kansas, boards of education not parties to this suit are initiating similar policies. Since these arguments have apparently come to transcend the original parties and issues, we trust it is not improper to comment on the experience of Kansas in areas other than Topeka.

Section 72-1724, General Statutes of Kansas, 1949, authorizing segregated elementary schools, applied to twelve cities of the state. One city, Hutchinson, never exercised the power the statute purported to confer. Two cities, Wichita and Pittsburg, maintained separate elementary schools for many years, but for reasons of local policy, terminated the practice in 1952. The recent action of Topeka is mentioned above and is detailed in the separate brief of its Board of Education. Six other cities of the state have, during the past year, commenced or completed the process of de-segregating their public schools.

Atchison. Atchison, a city of 13,000 persons, is located on the boundary between Kansas and Missouri. Its population is about 10% Negro. Segregation has been maintained in the public elementary schools of Atchison since the establishment of the system. It may be significant that the city was founded in 1854 by persons of pro-slavery sympathies and for years the southern tradition was manifest in the community. Prior to the present school year four elementary schools, each serving a fixed geographical area, have been maintained exclusively for white students and one elementary school has been maintained for Negroes. On September 12, 1953, the Board of Education adopted the following resolution:

> "That the plan of abolition of segregation in the public schools of Atchison heretofore established by the Board of Education and which has been effected in grades seven through twelve be intensified so as to complete the plan throughout grades one through six as soon as practicable."

Subsequent thereto, on June 9, 1954, the policy was implemented by the adoption of a further resolution, the text of which is set forth hereafter:

> "Motion was made by Mr. Thorning that segregation of negro pupils be discontinued as of this date in all Atchison city school districts with the exception of the Martin-Lincoln district; thereby eliminating the necessity for operation of the school bus transporting pupils to Lincoln school; also, that beginning with the school term of September 1955, all segregation be ended in the Martin-Lincoln district under such a plan as will promote the best interests of the students in our school system."

At the present time in excess of 25% of the Negro students of the city are attending mixed schools. The Board of Education anticipates that the process of desegregation will be completed by September 1, 1955. In addition to the integration of students as above set forth, a Negro has been employed as an elementary class-room teacher, teaching predominately white 6th grade classes. School administrators anticipate that all Negro teachers presently employed, will be assimilated into the integrated system.

Lawrence. Seat of the State University, Lawrence is a city of 24,000 population. About 7% of the people are Negro. Segregated schools had been maintained since prior to 1869. The process of assimilating the Negroes into white schools was apparently begun about 1916, with the result that during the past few years only one school had been maintained exclusively for Negroes. Subsequent to the decision of the Supreme Court of May 17, 1954, the Lawrence Board of Education ordered the immediate termination of segregation in all its public schools. In addition a Negro teacher was employed in the school system to teach special classes in junior high school and to teach physical education in the elementary schools, all of which classes are attended by predominately white students. The seriousness with which this community approaches the problem is indicated by the following comment of a school official in a communication addressed to the Attorney General of Kansas:

> "We recognize that some Kansas communities have problems more grave than ours—and we have some hurdles certainly.

"Does integration mean the mixing of white and colored pupils only? What is the status of the colored teacher? This year we employed one colored teacher on the basis of qualification for the job—but we recognize the possibility of unfavorable reaction when a colored person is employed as a teacher of a self contained room. Such adaptations must come slowly but must be achieved if integration is to be more than a term referring to mixing of colored and white pupils."

Leavenworth. Leavenworth, a city in excess of 20,000 inhabitants, has a Negro population of about 10%. The segregated system of elementary schools was established in 1858 and has been maintained consistently since that time. At present two elementary schools are maintained exclusively for Negro students, whereas nine are attended only by white. The policy announced by the Leavenworth Board of Education of August 2, 1954, indicates the reaction of the people of this community to the decision of May 17. The statement of policy is set forth hereafter:

"Pupils who enter the kindergarten or the first grade in the fall of 1954 will be permitted to enroll in the school of the district in which they reside regardless of race. Such negro pupils regardless of residence may continue to attend Lincoln and Sumner schools which will be adequately staffed with capable Negro teachers. It will be necessary for a time to establish attendance districts for the Lincoln and Sumner schools in order to carry out this policy. It is the belief of the Board of Education that the negro people in the Leavenworth community may desire to continue their schools as presently operated for a term of years during the transition period.

"The Board of Education in this statement of policy believes it to be consistent with the Supreme Court decision in that it is starting in an orderly way to move away from compulsory segregation.

"It is believed that integration, when desired by the parents, can best be initiated at the lower grade levels. Those colored pupils who enroll in non-negro-staffed schools at the kindergarten or first grade level may continue in the school through subsequent grades.

"It is believed that it will be best for the individual if integration begins at the primary level. Also, the existing school system has been established in a certain pattern, and because of limited facilities, the pattern of enrollment cannot be suddenly changed. The Board of Education is required to provide school facilities and to frame policies for the welfare of all pupils.

"The Board will continue to study the problem and restate its policies consistent with the expressed desires of the people within the framework of the Supreme Court decision.

"The Board solicits the cooperation of all citizens in making an orderly transition from a segregated to a non-segregated school system. It looks to the State Legislature, the State Department of Public Instruction and the Attorney General for counsel in the continuous reframing of its policies consistent with the Supreme Court's interpretation regarding the constitutionality of the Kansas statute under which Leavenworth schools have operated since 1879.

"The Board will make an effort to follow the suggestions and recommendations of the Supreme Court as promised to be made by that body subsequent to October, 1954."

The first positive step taken by the Leavenworth school system consistent with its declared policy has been the admission during the 1954-55 school year of kindergarten and first-grade pupils to the school nearest their residence regardless of race. Presumably next year the Board intends to extend this policy to the second or higher grades, although a positive statement to this effect has not been announced. The following comment of a public school official of Leavenworth suggests one of the problems incident to de-segregation, and the community's approach thereto:

> "It is the intention of the Leavenworth Board of Education to be completely fair in the treatment of its faithful and competent negro teachers. It has been in the cities maintaining segregated schools where the opportunity for employment has existed for negro teachers. There will be questions raised as to why we cannot suddenly integrate our teachers in these cities, and there will be a few sporadic cases for publicity purposes to illustrate that negro teachers can be used indiscriminately. There are frequent cleavages between teachers and pupils at best. Some pupils resist authority and for various reasons have to be disciplined, restrained, or corrected. This often puts parents on the defensive and causes them to question or resist the teacher's authority. Now, if that teacher of a white child should be a negro, the cleavage would be magnified fifty to a hundredfold. I am sure you are well aware of this.
>
> "The Leavenworth Board believes that for a considerable length of time, negro teachers will be used in schools attended almost entirely by negro pupils. It is perfectly logical to ask, why cannot we integrate them in one magnanimous action? What about

communities like Hutchinson who has never had seggregation? Have they ever employed a negro teacher or are they likely to start employing them now? In my judgment, the solution will have to be carefully and slowly introduced. You and I and most board members will readily agree to the righteousness of complete integration from the standpoint of our established principles of decency, christianity and democracy. However, there is a sufficient number of biased and prejudiced persons who will make life miserable for those in authority who attempt to move in that direction too rapidly. As a consequence, many of us will be accused of 'dragging our feet' in the matter, not because of our personal feelings or inclinations, but because in dealing with the public, its general approval and acceptance is indispensable. One cannot force it, he can only coax and nurture it along."

Kansas City. Kansas City has a total population of about 130,000, 20.5 percent of which belong to the Negro race. It is adjacent to Kansas City, Missouri. It is perhaps significant that the proportion of Negroes in Kansas City, Kansas, is greater than in such southern cities as Dallas, Louisville, Saint Louis, Tulsa, Miami and Oklahoma City, and only slightly less than that of Baltimore. Kansas City is the only community in Kansas where by virtue of law segregated high schools have been maintained. Prior to the present school year the City of Kansas City has maintained seven elementary schools, one junior high-school and one high school exclusively for its 6000 Negro students, while twenty-two schools were attended by more than 23,000 white students. On August 2, 1954, the following statement of

policy was adopted by the Board of Education of Kansas City:

> "The members of the Board of Education, meeting as a committee of the whole, propose the adoption of the following statement of policy with reference to the Supreme Court decision on segregation:
>
> "The Board of Education of the City of Kansas City of the State of Kansas hereby declares its intent to abide by the spirit as well as the letter of the Supreme Court's decision on segregation. Specifically, the Board of Education proposes:
>
> "1. To begin integration in all the public schools at the opening of school on September 13, 1954.
>
> "2. To complete the integration as rapidly as class room space can be provided.
>
> "3. To accomplish the transition from segregation to integration in a natural and orderly manner designed to protect the interests of all the pupils and to insure the support of the whole community.
>
> "4. To avoid any disruption of the professional life of career teachers.
>
> "With these objectives in mind, the Board of Education directs the Superintendent of Schools within the framework of this policy declaration to be responsible for developing and applying the plan of integration."

The plan subsequently adopted permitted Negro students in kindergarten and grades 1, 6, 7, 10, 11 and 12 to enter the school of their choice within normal geographic limitations. Because the bulk of the Negro population is concentrated in one area of the city, the termination of compulsory segregation will not elimi-

nate schools attended exclusively by Negroes. However, a total of 233 Negro students are now attending mixed schools, and approximately 1000 more live in areas where the process of amalgamation is now in progress. A report to the Attorney General's Office, dated October 12, 1954, from a school administrator indicates:

> "The announced program by the Board of Education was well received by whites and negroes alike and it is felt that integration in our schools is accepted and will be completed when classroom space permits. We are now engaged in the completion of a 6½ million dollar building program which includes the immediate problem before us."

School officials anticipate that subsequent to the completion of the amalgamation program all Negro teachers presently employed in the system will be retained.

Parsons. Parsons is located in southeastern Kansas some twenty miles from the Oklahoma border. It is a city of about 15,000 population, less than 10% of whom are Negroes. Prior to the current school year four elementary schools were maintained for white students and one for Negroes. Commencing with the current year, the Board of Education announced a policy to the effect that whenever possible and practical, restrictions on school attendance are to be immediately removed and segregation eliminated. In line with this policy, segregation was eliminated in three of four ward elementary school areas at the beginning of the 1954-55 school year. The remaining school area is being operated on a segregated basis because of crowded conditions. The separate Negro school is located in this ward. Consequently

every child may attend an elementary school in the ward in which he resides.

It is the present policy of the Board to delay integration of the schools of the fourth ward until additional school facilities will be completed. At the present time twenty-six Negro students in Parsons are attending mixed elementary schools, while one hundred and forty-three are required to attend the school maintained exclusively for Negroes.

Salina. Segregation was terminated in the City of Salina prior to the opening of the current school term. In view of the fact that less than 3% of the city's 27,000 people are Negroes, the problems incident to assimilation were slight. Prior to the present school term, one school was attended by all Negroes of the city. The present policy of the Board of Education permits all students to attend the school located nearest their homes.

Cities Reporting no Action. Only two cities, Coffeyville and Fort Scott, report that action by their Boards of Education has been delayed, pending final determination of this case. In these cities an aggregate of about 400 Negro students attend three segregated schools. Both cities are located in Southern Kansas, and school officials indicate that there has been no local sentiment in favor of the termination of the policy of segregation. In one city, it is reported that the only protest against the prospect of de-segregation has come from the Negro citizens. However, in each of these communities local school officials stand ready to take such action as may be consistent with the policies to be announced by this Court and the best interests of their people.

CONCLUSION.

We respectfully submit that all considerations germane to the present issues require that the decree of this Court do no more than reverse the judgment of the District Court and remand the cause to said court with directions to enter judgment consistent with the opinion herein and to retain jurisdiction thereof until said judgment be complied with.

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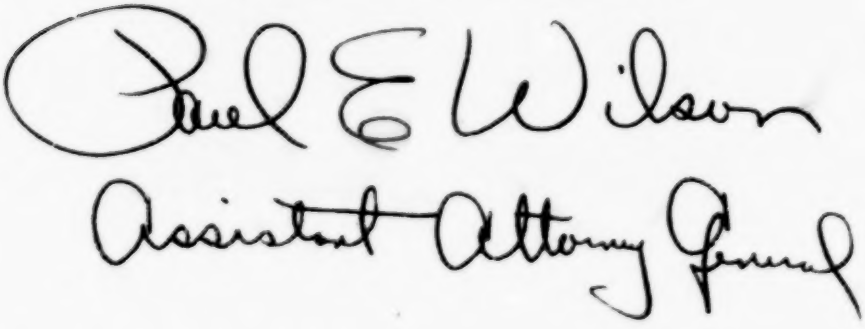

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BRIEF FOR APPELLANTS IN NOS. 1, 2 AND 3 AND FOR RESPONDENTS IN NO. 5 ON FURTHER REARGUMENT

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BRIEF FOR APPELLANTS IN NOS. 1, 2 AND 3 AND FOR RESPONDENTS IN NO. 5 ON FURTHER REARGUMENT

Preliminary Statement

On May 17, 1954, this Court disposed of the basic constitutional question presented in these cases by deciding that racial segregation in public education is unconstitutional. The Court said, however, that the formulation of decrees was made difficult "because these are class actions, because of the wide applicability of this decision and because of the great variety of local conditions . . . ." The cases were restored to the docket, and the parties were requested to present further argument on Questions 4 and 5 previously propounded by the Court for the reargument last Term.

Questions Involved

Questions 4 and 5, left undecided and now the subject of discussion in this brief, follow:

4. Assuming it is decided that segregation in public schools violates the Fourteenth Amendment

   (*a*) would a decree necessarily follow providing that, within the limits set by normal geographic school districting, Negro children should forthwith be admitted to schools of their choice, or

   (*b*) may this Court, in the exercise of its equity powers, permit an effective gradual adjustment to be brought about from existing segregated systems to a system not based on color distinctions?

5. On the assumption on which question 4(*a*) and (*b*) are based, and assuming further that this Court will exercise its equity powers to the end described in question 4(*b*),

   (*a*) should this Court formulate detailed decrees in these cases;

(*b*) if so, what specific issues should the decrees reach;

(*c*) should this Court appoint a special master to hear evidence with a view to recommending specific terms for such decrees;

(*d*) should this Court remand to the courts of first instance with directions to frame decrees in these cases, and if so, what general directions should the decrees of this Court include and what procedures should the courts of first instance follow in arriving at the specific terms of more detailed decrees?

Developments in These Cases Since the Last Argument

The Kansas Case

On September 3, 1953, the Topeka School Board adopted the following resolution:

> Be it resolved that it is the policy of the Topeka Board of Education to terminate the maintenance of segregation in the elementary schools as rapidly as is practicable.

On September 8, 1953, appellees ordered segregation terminated in two of the nineteen school districts in Topeka. In September, 1954, segregation was completely terminated in ten other school districts and partially in two.

There is now a total school enrollment of approximately 8,500 children of elementary school age attending 23 elementary schools. Of the 8,500 children enrolled, approximately 700 Negro children are in four elementary schools for Negroes. There are 123 Negro children now attending schools on a non-segregated basis pursuant to appellees' implementation of its policy of removing segregation from the public school system. The blunt truth is that

85% of the Negro children in Topeka's elementary schools are still being denied the constitutional rights for which appellants sought redress in their original action.

While Topeka has been effectuating its plan, several other cities of the first class have undertaken the abolition of segregated schools. Lawrence and Pittsburg have completely desegregated. Kansas City, Abilene, Leavenworth and Parsons have ordered partial desegregation. Wichita and Salina have revised their school regulations to permit Negro children to attend schools nearest their homes. Only Coffeeville and Fort Scott have not taken any affirmative action whatsoever.

The Delaware Case

By order of the Court of Chancery, affirmed by the Supreme Court of Delaware, the named plaintiffs were immediately admitted to the schools to which they applied. These plaintiffs and other members of the class are in their third year of uninterrupted attendance in the two Delaware schools named in the order. That attendance has been marked by no untoward incident. The order, however, did not result in elimination of separate schools for Negroes in the two school districts involved, in each of which one segregated elementary school is yet maintained by petitioners.

The State Board of Education has statutory authority to "exercise general control and supervision over the public schools of the State, including . . . the determination of the educational policies of the State and the seeking in every way to direct and develop public sentiment in support of public education." Delaware Code, Title 14, Section 121 (1953). Accordingly, the State Board of Education, on June 11, 1954, adopted a statement of "Policies Regarding Desegregation of Schools of the State" and announced "a general policy" that it "intends to carry

out the mandates of the United States Supreme Court decision as expeditiously as possible." It further requested that "the school authorities together with interested citizen groups throughout the State should take immediate steps to hold discussions for the purpose of (1) formulating plans for desegregation in their respective districts and (2) presenting said plans to the State Board of Education for review."

On August 19, 1954, the State Board of Education requested "that *all schools*, maintaining four or more teachers, present a *tentative plan* for desegregation in their area on or before *October 1, 1954*."

The desegregation plans of the Claymont Board of Education, whose members are petitioners here, providing for the complete termination of segregation, were approved by the State Board of Education on August 26, 1954. These plans have been partially put into operation.

No plan ending segregation in the Hockessin schools, the other Delaware area in the litigation here, has yet been formulated.

Delaware statutes provide for two types of public school districts, exclusive of the public school system in Wilmington which is practically autonomous. One type is commonly known as the State Board District. As to it, the statute provides that the "Board of School Trustees shall be the representative in the District of the State Board of Education." DELAWARE CODE, Title 14, Section 702 (1953). There are 98 such units. The other type is the Special School District, concerning which the statute provides that "There shall be a Board of Education which shall be responsible for the general administration and supervision of the free public schools and educational interests of the District." DELAWARE CODE, Title 14, Section 902 (1953). There are fifteen Special School Districts.

Desegregation in the school districts of Delaware is illustrated by the table below:

STATE BOARD DISTRICTS

	Partial Desegregation	*Complete Desegregation*	*No Desegregation*	*Total*
New Castle County ..	4	1	26	31
Kent County	0	0	24	24
Sussex County	0	0	43	43
				98

SPECIAL SCHOOL DISTRICTS

	Partial Desegregation	*Complete Desegregation*	*No Desegregation*	*Total*
New Castle County ..	3	1	1	5
Kent County	1	0	3	4
Sussex County*	0	0	6	6
				15

Wilmington, which is in New Castle County and contains 34% of the population of the State, in June desegregated all elementary and secondary schools for the 1954 summer session. It has also completely desegregated its night school sessions. Beginning in September, 1954, desegregation of all elementary schools was effectuated, with some integration of teachers.

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* Partial desegregation, that is, on the high school level, was instituted by the Milford Board of Education, in Sussex County. This action was later revoked and a test of the revocation is now pending in the Delaware courts. See Simmons v. Steiner, 108 A. 2d 173 (Del. Ct. Chanc. 1954). In that case the Vice-Chancellor found the Negro plaintiffs' rights to remain as students in Milford High School "clear and convincing" and restrained the Board of Education from excluding them. However, the Supreme Court of Delaware temporarily stayed the injunction to give that court sufficient time to examine "serious questions of law." Argument has been scheduled for December 13, 1954. Steiner v. Simmons (Del. Sup. Ct. No. 27, 1954).

The school districts involved in this litigation also are in New Castle County, which has 68% of the State's population. Desegregation in varying degrees has started in every major school district in this county, except one.

The State Board of Education has made specific requests to 58 of the 113 school districts in the State to submit such plans. Another six districts have stated that any kind of plan they may have would be more or less nullified by overcrowded classroom conditions. Fourteen others have indicated that they desire to await the mandate of this Court. The remaining districts have not responded to the State Board.

In summary, school districts in areas comprising more than 50% of the population of Delaware have undertaken some desegregation of the public schools. Many school districts in semi-urban and rural areas have undertaken no step. The ultimate responsibility for effectuating desegregation throughout Delaware rests with petitioners here, members of the State Board of Education.

The South Carolina Case

Since May 17, 1954, South Carolina's fifteen-man legislative "Segregation Study Committee" was reorganized and has conferred with the Governor, State education officials, other legislators and spokesmen from various civic and teacher organizations. All of their meetings have been closed to the public. The Committee also visited Louisiana and Mississippi "to observe what was being done in those states to preserve segregated schools."

On July 28, the committee issued an interim report which recommended that public schools be operated during the coming year "in keeping with previously established policy." The committee construed its assignment as being the formulation of courses of action whereby the State could continue public education "without unfortunate disruption by outside forces and influences which have no

knowledge of recent progress and no understanding of the problems of the present and future. . . ." Moreover, the report stated that the committee also recognized "the need for a system in keeping with public opinion and established traditions and living patterns."

The State Attorney General insisted that this Court should not undertake to direct further action even by the school district involved and announced that he considered the Clarendon County case "purely a local matter as far as the parties to the suit are concerned."

In Rock Hill (population 25,000 with 20% Negroes) a Catholic grade school voluntarily desegregated. Opening day enrollment was 29 white students and five Negroes. There has been no report of overt action against this development; but the parents of some of the children have been remonstrated with by neighbors and workers.[1]

A newspaper report [1a] of a public speech of E. B. McCord, one of the appellees herein, superintendent of education for Clarendon County, states in part:

> There will be no mixed schools in Clarendon County as long as there is any possible way for present leadership to prevent them.
>
> So declared L. B. McCord of Manning, Clarendon County superintendent of education, in an address before the Lions Club here Monday night.
>
> Decrying the fact that "Our churches seem to be letting their zeal run away in leading the way," he denounced de-segregation as contrary to the Scriptures and to good sense.

The Virginia Case

On May 27, 1954, the State Board of Education advised city and county school boards to continue segregation during the present school year.

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[1] Southern School News, Sept. 3, 1954, p. 12, col. 3-4.

[1a] Charleston News and Courier, August 4, 1954.

On August 28, the Governor named a thirty-two-man, all-white legislative commission to study the problems raised by the Court's ruling and to prepare a report and recommendations to the legislature and to him. The Governor then announced:

> . . . I am inviting the commission to ascertain, through public hearings and such other means as appear appropriate, the wishes of the people of Virginia; to give careful study to plans or legislation or both, that should be considered for adoption in Virginia after the final decree of the Court is entered, and to offer such other recommendations as it may deem proper as a result of the decision of the Supreme Court affecting the public schools.[2]

At its first meeting the commission adopted a rule that:

> All meetings of the commission shall be executive and its deliberations confidential, except when the meeting consists of a public hearing or it is otherwise expressly decided by the commission.[3]

By October, the local school boards or boards of supervisors of approximately 25 of the state's 98 counties had adopted and forwarded to the Governor resolutions urging the continuation of segregated schools.

In May, 1954, the Richmond Diocese of the Roman Catholic Church, which includes all but 6 of Virginia's counties, announced that during the Fall of 1954, Negroes would for the first time be admitted to previously all-white Catholic parochial schools where there was no separate parochial school for Negroes. Approximately 40 Negro pupils of a total of 3,527 are enrolled in four high and six

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[2] Southern School News, Sept. 3, 1954, p. 13, col. 5.

[3] Southern School News, Oct. 1, 1954, p. 14, col. 2-3.

elementary parochial schools formerly attended only by white pupils. The Superintendent of the Richmond Diocese states that integration in these schools "has worked out magnificiently, without a ripple of discontent, ..."[4]

ARGUMENT

I.

Answering Question 4: Only a Decree Requiring Desegregation as Quickly as Prerequisite Administrative and Mechanical Procedures Can Be Completed Will Discharge Judicial Responsibility for the Vindication of the Constitutional Rights of Which Appellants Are Being Deprived.

In the normal course of judicial procedure, this Court's decision that racial segregation in public education is unconstitutional would be effectuated by decrees forthwith enjoining the continuation of that segregation. Indeed, in *Sipuel* v. *Board of Regents*, 332 U. S. 631, when effort was made to secure postponement of the enforcement of similar rights, this Court not only refused to delay action but accelerated the granting of relief by ordering its mandate to issue forthwith.

In practical effect, such disposition of this litigation would require immediate initiation of the administrative procedures prerequisite to desegregation, to be followed by the admission of the complaining children and others similarly situated to unsegregated schools at the beginning of the next academic term. This means that appellees will have had from May 17, 1954, to September, 1955, to complete whatever adjustments may be necessary.

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[4] *Id.* at p. 14, col. 5.

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If appellees desire any postponement of relief beyond that date, the affirmative burden must be on them to state explicitly what they propose and to establish that the requested postponement has judicially cognizable advantages greater than those inherent in the prompt vindication of appellants' adjudicated constitutional rights. Moreover, when appellees seek to postpone the enjoyment of rights which are personal and present, *Sweatt* v. *Painter*, 339 U. S. 629; *Sipuel* v. *Board of Regents*, 332 U. S. 631, that burden is particularly heavy. When the rights of school children are involved the burden is even greater. Each day relief is postponed is to the appellants * a day of serious and irreparable injury; for this Court has announced that segregation of Negroes in the public schools "generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone. . . ." And, time is of the essence because the period of public school attendance is short.

A. Aggrieved Parties Showing Denial of Constitutional Rights in Analogous Situations Have Received Immediate Relief Despite Arguments For Delay More Persuasive Than Any Available Here.

Where a substantial constitutional right would be impaired by delay, this Court has refused to postpone injunctive relief even in the face of the gravest of public considerations suggested as justification therefor. In *Youngstown Sheet & Tube Co.* v. *Sawyer*, 343 U. S. 579, this Court upheld the issuance of preliminary injunctions restraining the Government's continued possession of steel mills seized under Presidential order intended to avoid a work stoppage that would imperil the national defense during the Korean conflict. The Government argued that even though the seizure might be unconstitutional, the

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* As used in this Brief, "appellants" include the respondents in No. 5.

public interest in uninterrupted production of essential war materials was superior to the owners' rights to the immediate return of their properties. It is significant that in the seven opinions filed no Justice saw any merit in this position. If equity could not appropriately exercise its broad discretion to withhold the immediate grant of relief in the *Youngstown* case, such a postponement must certainly be inappropriate in these cases where no comparable overriding consideration can be suggested.

Similarly in Ex parte *Endo*, 323 U. S. 283, this Court rejected the Government's argument that hardship and disorder resulting from racial prejudice could justify delay in releasing the petitioner. There, the argument made by the Government to justify other than immediate relief was summarized in the Court's opinion as follows (pp. 296-297):

> It is argued that such a planned and orderly relocation was essential to the success of the evacuation program; that but for such supervision there might have been a dangerously disorderly migration of unwanted people to unprepared communities; that unsupervised evacuation might have resulted in hardship and disorder; that the success of the evacuation program was thought to require the knowledge that the Federal government was maintaining control over the evacuated population except as the release of individuals could be effected consistently with their own peace and well-being and that of the nation; that although community hostility towards the evacuees has diminished, it has not disappeared and the continuing control of the Authority over the relocation process is essential to the success of the evacuation program. It is argued that supervised relocation, as the chosen method of terminating the evacuation, is the final step in the entire process and is a consequence of the first step taken. It is conceded that appellant's detention pending compliance with the leave regulations is not directly connected with the prevention of espionage and sabotage at the present time. But it is argued that Executive Order No. 9102 confers power to make regulations

> necessary and proper for controlling situations created by the exercise of the powers expressly conferred for protection against espionage and sabotage. The leave regulations are said to fall within that category.

In a unanimous decision, with the Court's opinion by Mr. Justice Douglas and two concurring opinions, the Court held that the petitioner must be given her unconditional liberty because the detention was not permissible by either statutory or administrative authorization. Viewing the petitioner's right as being in that "sensitive area of rights specifically guaranteed by the Constitution" (p. 299), the Court rejected the Government's contention that a continuation of its unlawful course of conduct was necessary to avoid the harmful consequences which otherwise would follow.

It is true that in the *Endo* case the contention rejected was that an executive order (which on its face did not authorize the petitioner's detention) ought to be extended by "construction" so as to entitle the Relocation Authority to delay the release of the petitioner until it felt that social conditions made it convenient and prudent to do so. In this case, the suggestion is that this Court, in the exercise of its equity powers, ought to withhold appellants' constitutional rights on closely similar grounds. But this is not a decisive distinction. If, as the *Endo* case held, the enjoyment of a constitutional right may not be deferred by a process of forced construction on the basis of factors closely similar to the ones at work in the instant case, then certainly this Court ought not to find in its equitable discretion a mandate or empowerment to obtain the same result.

In the *Endo* case, the national interest in time of war was present. In these cases, no such interest exists. Thus, there is even less basis for delaying the immediate enjoyment of appellants' rights.

Counsel have discovered no case wherein this Court has found a violation of a present constitutional right but has postponed relief on the representation by governmental officials that local mores and customs justify delay which might produce a more orderly transition.

It would be paradoxical indeed if, in the instant cases, it were decided for the first time that constitutional rights may be postponed because of anticipation of difficulties arising out of local feelings. These cases are brought to vindicate rights which, as a matter of common knowledge and legal experience, need, above all others, protection against local attitudes and patterns of behavior.[5] They are brought, specifically, to uphold rights under the Fourteenth Amendment which are not to be qualified, substantively or remedially, by reference to local mores. On the contrary, the Fourteenth Amendment, on its face and as a matter of history, was designed for the very purpose of affording protection against local mores and customs, and Congress has implemented that design by providing redress against aggression under color of state laws, customs and usages. 28 U. S. C. § 1343; 42 U. S. C. § 1983.

Surely, appellants' rights are not to be enforced at a pace geared down to the very customs which the Fourteenth Amendment and implementing federal laws were designed to combat.

Cases in which delays in enforcement of rights have been granted involve totally dissimilar considerations. Such cases generally deal with the abatement of nuisances, e.g., *New Jersey* v. *New York*, 283 U. S. 473; *Wisconsin* v. *Illinois*, 278 U. S. 367; *Arizona Copper Co.* v. *Gillespie*, 230 U. S. 46; *Georgia* v. *Tennessee Copper Co.*, 206 U. S. 230; or with violations of the anti-trust laws, e.g., *Schine*

[5] In the instant cases, dark and uncertain prophecies as to anticipated community reactions to school desegregation are speculative at best.

Chain Theaters v. *United States*, 334 U. S. 110; *United States* v. *National Lead Co.*, 332 U. S. 319; *United States* v. *Crescent Amusement Co.*, 323 U. S. 173; *Hartford-Empire Co.* v. *United States*, 323 U. S. 386; *United States* v. *American Tobacco Co.*, 221 U. S. 106; *Standard Oil Co. of New Jersey* v. *United States*, 221 U. S. 1.

These cases are readily distinguishable, and are not precedents for the postponement of relief here. In the nuisance cases, the Court allowed the offending parties time to comply because the granting of immediate relief would have caused great injury to the public or to the defendants with comparatively slight benefit to the plaintiffs. In the instant cases, a continuation of the unconstitutional practice is as injurious to the welfare of our government as it is to the individual appellants.

In the anti-trust cases, delay could be granted without violence to individual rights simply because there were no individual rights on the plaintiff's side. The suits were brought by the Government and the only interest which could have been prejudiced by the delays granted is the diffuse public interest in free competition. The delays granted in anti-trust cases rarely, if ever, permit the continuance of active wrongful conduct, but merely give time for dissolution and dissipation of the effects of past misconduct. Obviously, these cases have nothing to do with ours.

It should be remembered that the rights involved in these cases are not only of importance to appellants and the class they represent, but are among the most important in our society. As this Court said on May 17th:

> Today, education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our

> recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms.

Neither the nuisance cases nor the anti-trust cases afford any support for delay in these cases. On the contrary, in cases more nearly analogous to the instant cases, this Court has held that the executive branch of the government could not justify the detention of wrongfully seized private property on the basis of a national economic crisis in the midst of the Korean conflict. Nor could the War Relocation Authority wrongfully detain a loyal American because of racial tension or threats of disorder. It follows that in these cases this Court should apply similar limitations to the judiciary in the exercise of its equity power when a request is made that it delay enjoyment of personal rights on grounds of alleged expediency.

B. Empirical Data Negate Unsupported Speculations That a Gradual Decree Would Bring About a More Effective Adjustment.

Obviously, we are not aware of what appellees will advance on further argument as reasons for postponing the enforcement of the rights here involved. Therefore, the only way we can discuss Question 4(b) is by conjecture in so far as reasons for postponement are concerned.

There is no basis for the assumption that gradual as opposed to immediate desegregation is the better, smoother or more "effective" mode of transition. On the contrary, there is an impressive body of evidence which supports the position that gradualism, far from facilitating the process, may actually make it more difficult; that, in fact, the problems of transition will be a good deal less complicated than might be forecast by appellees. Our submission is that this, like many wrongs, can be easiest and best undone, not by "tapering off" but by forthright action.

There is now substantial documented experience with desegregation in this country, in schools and elsewhere.[6] On the basis of this experience, it is possible to estimate with some accuracy the chances of various types of "gradual" plans for success in minimizing trouble during the period of transition.

Some plans have been tried involving a set "deadline" without the specification of intervening steps to be taken. Where such plans have been tried, the tendency seems to have been to regard the deadline as the time when action is to be initiated rather than the time at which desegregation is to be accomplished. Since there exists no body of knowledge that is even helpful in selecting an optimum time at the end of which the situation may be expected to be better, the deadline date is necessarily arbitrary and hence may be needlessly remote.[7]

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[6] See ASHMORE, THE NEGRO AND THE SCHOOLS (1954); CLARK, DESEGREGATION: AN APPRAISAL OF THE EVIDENCE, 9 J. SOCIAL ISSUES 1-77 (1953); NEXT STEPS IN RACIAL DESEGREGATION IN EDUCATION, 23 J. NEGRO ED. 201-399 (1954).

See also REPORT BY THE PRESIDENT'S COMMITTEE ON EQUALITY OF OPPORTUNITY IN THE ARMED FORCES (1950).

[7] ASHMORE, *op. cit. supra* note 6, at 70, 71, 79, 80; CLARK, *op. cit. supra* note 6, at 36, 45.

A species of the "deadline" type of plan attempts to prepare the public, through churches, radio and other agencies, for the impending change. It is altogether conjectural how successful such attempts might be in actually effecting change in attitude. The underlying assumption—that change in attitude must precede change in action—is itself at best a highly questionable one. There is a considerable body of evidence to indicate that attitude may itself be influenced by situation [8] and that, where the situation demands that an individual act as if he were not prejudiced, he will so act, despite the continuance, at least temporarily, of the prejudice.[9] We submit that this Court can itself contribute to an effective and decisive change in attitude by insistence that the present unlawful situation be changed forthwith.

As to any sort of "deadline" plan, even assuming that community leaders make every effort to build community support for desegregation, experience shows that other forces in the community will use the time allowed to firm

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[8] CLARK, *op. cit. supra* note 6, at 69-76.

[9] KUTNER, WILKINS and YARROW, VERBAL ATTITUDES AND OVERT BEHAVIOR INVOLVING RACIAL PREJUDICE, 47 J. ABNORMAL AND SOCIAL PSYCH. 649-652 (1952); LA PIERE, ATTITUDES VS. ACTION, 13 SOCIAL FORCES 230-237 (1934); SAENGER and GILBERT, CUSTOMER REACTIONS TO THE INTEGRATION OF NEGRO SALES PERSONNEL, 4 INT. J. OPINION AND ATTITUDES RESEARCH 57-76 (1950); DEUTSCH and COLLINS, INTERRACIAL HOUSING, A PSYCHOLOGICAL STUDY OF A SOCIAL EXPERIMENT (1951); CHEIN, DEUTSCH, HYMAN and JAHODA, CONSISTENCY AND INCONSISTENCY IN INTERGROUP RELATIONS, 5 J. SOCIAL ISSUES 1-63 (1949).

up and build opposition.[10] At least in South Carolina and Virginia, as well as in some other states affected by this decision, statements and action of governmental officials since May 17th demonstrate that they will not use the time allowed to build up community support for desegregation.[11] Church groups and others in the South who are seeking to win community acceptance for the Court's May

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[9] (cont.) ASHMORE, *op. cit. supra* note 6, at 42; New York Times, "Mixed Schools Set in 'Border' States", August 29, 1954, p. 88, col. 1-4; New York Times, "New Mexico Town Quietly Ends Pupil Segregation Despite a Cleric", August 31, 1954, p. 1, col. 3-4; ROSE, YOU CAN'T LEGISLATE AGAINST PREJUDICE—OR CAN YOU?, 9 COMMON GROUND 61-67 (1949), reprinted in RACE PREJUDICE AND DISCRIMINATION, (Rose ed. 1951); NICHOLS, BREAKTHROUGH ON THE COLOR FRONT (1954); MERTON, WEST and JAHODA, SOCIAL FICTIONS AND SOCIAL FACTS: THE DYNAMICS OF RACE RELATIONS IN HILLTOWN, COLUMBIA UNIVERSITY BUREAU OF APPLIED SOCIAL RESEARCH (mimeographed); MERTON, WEST, JAHODA and SELDEN, SOCIAL POLICY AND SOCIAL RESEARCH IN HOUSING, 7 J. SOCIAL ISSUES, 132-140 (1951); MERTON, THE SOCIAL PSYCHOLOGY OF HOUSING (1948).

South as well as North, people's actions and attitudes were changed not in advance of but after the admission of Negroes into organized baseball. See CLEMENT, RACIAL INTEGRATION IN THE FIELD OF SPORTS, 23 J. NEGRO ED. 226-228 (1954). Objections to desegregation have generally been found to be greater before than after its accomplishment. CLARK, *op. cit. supra* note 6, *passim*; CONFERENCE REPORT, ARIZONA COUNCIL FOR CIVIC UNITY CONFERENCE ON SCHOOL SEGREGATION (Phoenix, Arizona, June 2, 1951).

[10] CLARK, *op. cit. supra* note 6, at 43, 44; BROGAN, THE EMERSON SCHOOL—COMMUNITY PROBLEM, GARY, INDIANA, BUREAU OF INTERCULTURAL EDUCATION REPORT (October 1947, mimeographed); TIPTON, COMMUNITY IN CRISIS 15-76 (1953).

[11] For the latest example of this, see New York Times, "7 of South's Governors Warn of 'Dissensions' in Curb on Bias—Avow Right of States to Control Public School Procedures—Six at Meeting Refrain from Signing Statement", November 14, 1954, p. 58, col. 4-5.

17th decision cannot be effective without the support of a forthwith decree from this Court.

Besides the "deadline" plans, various "piecemeal" schemes have been suggested and tried. These seem to be inspired by the assumption that it is always easier and better to do something slowly and a little at a time than to do it all at once. As might be expected, it has appeared that the resistance of some people affected by such schemes is increased since they feel arbitrarily selected as experimental animals. Other members in the community observe this reaction and in turn their anxieties are sharpened.[12]

Piecemeal desegregation of schools, on a class-by-class basis, tends to arouse feelings of the same kind [13] and these feelings are heightened by the intra-familial and intra-school differences thus created.[14] It would be hard to imagine any means better calculated to increase tension in regard to desegregation than to so arrange matters so that some children in a family were attending segregated and others unsegregated classes. Hardly more promising of harmony is the prospect of a school which is segregated in the upper parts and mixed in the lower.

When one looks at various "gradual" processes, the fact is that there is no convincing evidence which supports the theory that "gradual" desegregation is more "effec-

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[12] TIPTON, *op. cit. supra* note 11, at 42, 47, 57, 71; CLARK, SOME PRINCIPLES RELATED TO THE PROBLEM OF DESEGREGATION, 23 J. NEGRO ED. 343 (1954); CULVER, RACIAL DESEGREGATION IN EDUCATION IN INDIANA, 23 J. NEGRO ED. 300 (1954).

[13] ASHMORE, *op. cit. supra* note 6, at 79, 80; CLARK, DESEGREGATION: AN APPRAISAL OF THE EVIDENCE, *op. cit. supra* note 6, at 36, 45.

[14] CLARK, EFFECTS OF PREJUDICE AND DISCRIMINATION ON PERSONALITY DEVELOPMENTS, MID-CENTURY WHITE HOUSE CONFERENCE ON CHILDREN AND YOUTH (mimeographed, 1950).

tive".[15] On the contrary, there is considerable evidence that the forthright way is a most effective way.[16]

The progress of desegregation in the Topeka schools is an example of gradualism based upon conjecture, fears and speculation regarding community opposition which might delay completion of desegregation forever. The desegregation plan adopted by the Topeka school authorities called for school desegregation first in the better residential areas of the city and desegregation followed in those areas where the smallest number of Negro children lived. There is little excuse for the school board's not having already completed desegregation. Apparently either the fact that the school board, in order to complete the transition, may have to utilize one or more of the former schools for Negroes and

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[15] ASHMORE, *op. cit. supra* note 6, at 80:

> Proponents of the gradual approach argue that it minimizes public resistance to integration. But some school officials who have experienced it believe the reverse is true. A markedly gradual program, they contend, particularly one which involves the continued maintenance of some separate schools, invites opposition and allows time for it to be organized. Whatever the merit of this argument, the case histories clearly indicate a tendency for local political pressure to be applied by both sides when the question of integration is raised, and when policies remain unsettled for a protracted period the pressures mount. One school board member in Arizona privately expressed the wish that the state had gone all the way and made integration mandatory instead of optional—thus giving the board something to point to as justification for its action.

[16] CLARK, *op. cit. supra* note 6, at 46, 47; WRIGHT, RACIAL INTEGRATION IN THE PUBLIC SCHOOLS OF NEW JERSEY, 23 J. NEGRO ED. 283 (1954); KNOX, RACIAL INTEGRATION IN THE SCHOOLS OF ARIZONA, NEW MEXICO, AND KANSAS, 23 J. NEGRO ED. 291, 293 (1954); CULVER, RACIAL DESEGREGATION IN EDUCATION IN INDIANA, 23 J. NEGRO ED. 296, 300-302 (1954).

assign white children to them or the fact that it must now reassign some 700 Negro children to approximately seven former all-white schools, seems to present difficulties to appellees. One must remember that in Topeka there has been complete integration above the sixth grade for many years. The schools already desegregated have reported no difficulties. There can hardly be any basic resistance to nonsegregated schools in the habits or customs of the city's populace. The elimination of the remnants of segregation throughout the city's school system should be a simple matter.

No special public preparations involving teachers, parents, students or the general public were made, nor were they necessary in advance of either the first or second step in the implementation of the Board's decision to desegregate the school system. Indeed, the Board of Education adopted the second step in January, 1954, and the only reports of what was involved were those published in the newspapers. Negro parents living in these territories were not notified by appellees regarding the change, but transferred their children to the schools in question on the basis of information provided in the newspapers. As far as the teachers in those schools were concerned, they were merely informed in the Spring of 1954 that their particular schools would be integrated in September. Thus, delay here cannot be based upon need for public orientation.

It should be pointed out that of the 23 public elementary schools, there exists potential space for some additional 83 classrooms of which 16 such potential classrooms are in the four schools to which the majority of the Negroes are now assigned. No claim can be made that the school system is overcrowded and unable to absorb the Negro and white children under a reorganization plan. There is no discernable reason why all of the elementary schools of Topeka have not been desegregated.

As is pointed out in the Brief for Petitioners on Further Reargument in *Bolling* v. *Sharpe* (No. 4, October

Term, 1954) the gradualist approach adopted by the Board of Education in Washington, D. C., produced confusion, hardship and unnecessary delay. Indeed, the operation of the "Corning Plan" has produced manifold problems in school administration which could have been avoided if the transition had been immediate. The argument that delay is more sound educationally has been shown to be without basis in fact in the operation of the District of Columbia plan—so conclusively, in fact, that the time schedule has been accelerated. The experience in the District argues for immediate action.

To suggest that this Court may properly mold its relief so as to serve whatever theories as to educational policy may be in vogue is to confuse its function with that of a school board, and to confuse the clear-cut constitutional issue in these cases with the situation in which a school board might find itself if it were unbound by constitutional requirements and were addressing itself to the policy problem of effecting desegregation in what seems to it the most desirable way. But even if a judgment as to the abstract desirability of gradualism could be supported by evidence, it is outside the province of this Court to balance the merely desirable against the adjudicated constitutional rights of appellants. The Constitution has prescribed the educational policy applicable to the issue tendered in this case, and this Court has no power, under the guise of a "gradual" decree, to select another.

We submit that there are various necessary administrative factors which would make "immediate" relief as of tomorrow physically impossible. These include such factors as need for redistricting and the redistribution of teachers and pupils. Under the circumstances of this case, the Court's mandate will probably come down in the middle or near the close of the 1954 school term, and the decrees of the courts of first instance could not be put into effect until September, 1955. Appellees would, therefore, have had from May 17, 1954, to September, 1955, to make necessary administrative changes.

II.

Answering Question 5: If This Court Should Decide to Permit an "Effective Gradual Adjustment" from Segregated School Systems to Systems Not Based on Color Distinctions, It Should Not Formulate Detailed Decrees but Should Remand These Cases to the Courts of First Instance with Specific Directions to Complete Desegregation by a Day Certain.

In answering Question 5, we are required to assume that this Court "will exercise its equity powers to permit an effective gradual adjustment to be brought about from existing segregated systems to a system not based on color distinctions" thereby refusing to hold that appellants were entitled to decrees providing that, "within the limits set by normal geographic school districting, Negro children should forthwith be admitted to schools of their choice." While we feel most strongly that this Court will not subordinate appellants' constitutional rights to immediate relief to any plan for an "effective gradual adjustment," we must nevertheless assume the contrary for the purpose of answering Question 5.[17]

Question 5 assumes that there should be an "effective gradual adjustment" to a system of desegregated educa-

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[17] "5. On the assumption on which question 4(*a*) and (*b*) are based, and assuming further that this Court will exercise its equity powers to the end described in question 4(*b*),

"(*a*) should this Court formulate detailed decrees in these cases;

"(*b*) if so, what specific issues should the decrees reach;

"(*c*) should this Court appoint a special master to hear evidence with a view to recommending specific terms for such decrees;

"(*d*) should this Court remand to the courts of first instance with directions to frame decrees in these cases, and if so, what general directions should the decrees of this Court include and what procedures should the courts of first instance follow in arriving at the specific terms of more detailed decrees?"

tion. We have certain difficulties with this formulation. We have already demonstrated that there is no reason to believe that any form of gradualism will be more effective than forthwith compliance. If, however, this Court determines upon a gradual decree, we then urge that, as a minimum, certain safeguards must be embodied in that "gradual" decree in order to render it as nearly "effective" as any decree can be which continues the injury being suffered by these appellants as a consequence of the unconstitutional practice here complained of.

Appellants assume that "the great variety of local conditions", to which the Court referred in its May 17th opinion, embraces only such educationally relevant factors as variations in administrative organization, physical facilities, school population and pupil redistribution, and does not include such judicially non-cognizable factors as need for community preparation, Ex Parte *Endo*, 323 U. S. 283, and threats of racial hostility and violence, *Buchanan* v. *Warley*, 245 U. S. 60; *Monk* v. *City of Birmingham*, 185 F. 2d 859 (C. A. 5th 1950), *cert. denied*, 341 U. S. 940.

Further we assume that the word "effective" might be so construed that a plan contemplating desegregation after the lapse of many years could be called an "effective gradual adjustment." For, whenever the change is in fact made, it results in a desegregated system. We do not understand that this type of adjustment would be "effective" within the meaning of Question 5 nor do we undertake to answer it in this framework. Rather, we assume that under any circumstances, the question encompasses due consideration for the constitutional rights of each of these appellants and those presently in the class they represent to be free from enforced racial segregation in public education.

Ordinarily, the problem—the elimination of race as the criterion of admission to public schools—by its very nature would require only general dispositive directions by this Court. Even if the Court decides that the adjustment to

nonsegregated systems is to be gradual, no elaborate decree structure is essential at this stage of the proceedings. In neither event would appellants now ask this Court, or any other court, to direct or supervise the details of operation of the local school systems. In either event, we would seek effective provisions assuring their operation—forthwith in the one instance and eventually in the other—in conformity with the Constitution.

These considerations suggest appellants' answers to Question 5. Briefly stated, this Court should not formulate detailed decrees in these cases. It should not appoint a special master to hear evidence with a view to recommending specific terms for such decrees. It should remand these cases to the courts of first instance with directions to frame decrees incorporating certain provisions, hereinafter discussed, that appellants believe are calculated to make them as nearly effective as any gradual desegregation decree can be. The courts of first instance need only follow normal procedures in arriving at such additional provisions for such decrees as circumstances may warrant.

Declaratory Provisions

This Court should reiterate in the clearest possible language that segregation in public education is a denial of the equal protection of the laws. It should order that the decrees include a recital that constitutional and statutory provisions, and administrative and judicial pronouncements, requiring or sanctioning segregated education afford no basis for the continued maintenance of segregation in public schools.

The important legal consequence of such declaratory provisions would be to obviate the real or imagined dilemma of some school officials who contend that, pending the issuance of injunctions against the continuation of segregated education in their own systems, they are entitled or even obliged to carry out state policies the invalidity of

which this Court has already declared. The dilemma is well illustrated by the case of *Steiner* v. *Simmons* (Del. Sup. Ct. No. 27, 1954), pending in the Delaware Supreme Court, wherein plaintiffs are suing for readmission to Milford's high school from which, on September 30, 1954, they were expelled because they are Negroes. The Vice Chancellor granted the requested mandatory injunction, finding that plaintiffs had a constitutional right to readmission to school. The Delaware Supreme Court, however, granted a stay pending determination of the appeal on the basis of its preliminary conclusion that "there are serious questions of law touching the existence of that legal right." [18]

This Court's decision of May 17th put state authorities on notice that thereafter they could not with impunity

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[18] Cf. Burr v. Bd. of School Commrs. of Baltimore, Superior Court of Baltimore City, Oct. 5, 1954 (unreported), in which case Judge James K. Cullen stated in part:

> In the instant case this Court is asked to issue a writ of mandamus requiring these defendants, the School Board, to continue with its policy of segregation. This Court finds the Board of School Commissioners have exercised their discretion legally and in accordance with a final and enforceable holding and decision of the Supreme Court. Those cases were undoubtedly argued before the Supreme Court fully, and the views of every division of thought of our citizenry was undoubtedly presented to the Court; but the Court has spoken. Whether the individual agrees or disagrees with the finding, he is bound thereby so long as it remains the law of the land. The Court realizes the change and the difficulty some may have accepting the reality or the inevitable from the standpoint of enforcement. We live in a country where our rights and liberties have been protected under a system of laws which has withstood the test of time. We must allow ourselves to be governed by those laws, realizing there are many differences among our people. Respect for the law is of paramount importance. The law must be accepted. We must all be forced to abide by it. We can gain nothing by demonstrations of violence except sorrow and possible destructions.

abrogate the constitutional rights of American children not to be segregated in public schools on the basis of race. This type of recital in the decree should foreclose further misunderstanding, real or pretended, of the principle of law that continuation of racial segregation in public education is in direct violation of the Constitution—state constitutions, statutes, custom or usage requiring such segregation to the contrary notwithstanding.

Time Provisions

We do not know what considerations may be presented by appellees to warrant gradualism. But whatever these considerations may be, appellants submit that any school plan embracing gradualism must safeguard against the gradual adjustment becoming an interminable one. Therefore, appellants respectfully urge that this Court's opinion and mandate also contain specific directions that any decree to be entered by a district court shall specify (1) that the process of desegregation be commenced immediately, (2) that appellees be required to file periodic reports to the courts of first instance, and (3) an outer time limit by which desegregation must be completed.

Even cases involving gradual decrees have required some amount of immediate compliance by the party under an obligation to remedy his wrongs to the extent physically possible.[19] In *Wisconsin* v. *Illinois*, 281 U. S. 179, the Court said:

> It already has been decided that the defendants are doing a wrong to the complainants, and that they must stop it. They must find out a way at their peril. We have only to consider what is possible if the state of Illinois devotes all its powers to

[19] See Wisconsin v. Illinois, 281 U. S. 179; Arizona Copper Co. v. Gillespie, 230 U. S. 46; Georgia v. Tennessee Copper Co., 206 U. S. 230; Westinghouse Air Brake Co. v. Great Northern Ry. Co., 86 Fed. 132 (C. C. S. D. N. Y. 1898).

> dealing with an exigency to the magnitude of which it seems not yet to have fully awaked. It can base no defenses upon difficulties that it has itself created. If its Constitution stands in the way of prompt action, it must amend it or yield to an authority that is paramount to the state (p. 197).
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> 1. On and after July 1, 1930,[20] the defendants, the state of Illinois and the sanitary district of Chicago are enjoined from diverting any of the waters of the Great Lakes-St. Lawrence system or watershed through the Chicago drainage canal and its auxiliary channels or otherwise in excess of an annual average of 6,500 c.f.s. in addition to domestic pumpage (p. 201).

Considering the normal time consumed before the issuance of the mandate of this Court and the time for submission and preparation of decrees by the courts of first instance, decrees in these cases will not issue until after February, 1955—after the normal mid-term in most school systems. Thus, the school boards would have until September, 1955—sixteen months after the May 17th opinions—to change to a system not based on color distinctions. This time could very well be considered as necessarily incidental to any decision by this Court requiring "forthwith" decrees by the courts of first instance.

Whatever the reasons for gradualism, there is no reason to believe that the process of transition would be more effective if further extended. Certainly, to indulge school authorities until September 1, 1956, to achieve desegregation would be generous in the extreme. Therefore, we submit that if the Court decides to grant further time, then the Court should direct that all decrees specify September, 1956, as the outside date by which desegregation must be accomplished. This would afford more than a year, in excess of the time necessary for administrative changes,

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[20] This opinion was rendered April 30, 1930.

to review and modify decisions in the light of lessons learned as these decisions are put into effect.

We submit that the decrees should contain no provision for extension of the fixed limit, whatever date may be fixed. Such a provision would be merely an invitation to procrastinate.[21]

We further urge this Court to make it plain that the time for completion of the desegregation program will not depend upon the success or failure of interim activities. The decrees in the instant cases should accordingly provide that in the event the school authorities should for any reason fail to comply with the time limitation of the decree, Negro children should then be immediately admitted to the schools to which they apply.[22]

All states requiring segregated public education were by the May 17th decision of this Court put upon notice that segregated systems of public education are unconstitutional. A decision granting appellees time for gradual adjustment should be so framed that no other state maintaining such a system is lulled into a period of inaction and induced to merely await suit on the assumption that it will then be granted the same period of time after such suit is instituted.

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[21] ASHMORE, THE NEGRO AND THE SCHOOLS 70-71 (1954); CULVER, RACIAL DESEGREGATION IN EDUCATION IN INDIANA, 23 J. NEGRO ED. 296-302 (1954).

[22] See United States v. American Tobacco Co., 221 U. S. 106, where this Court directed the allowance of a period of six months, with leave to grant an additional sixty days if necessary, for activities dissolving an illegal monopoly and recreating out of its components a new situation in harmony with the law, but further directed that if within this period a legally harmonious condition was not brought about, the lower court should give effect to the requirements of the Sherman Act.

Conclusion

Much of the opposition to forthwith desegregation does not truly rest on any theory that it is better to accomplish it gradually. In considerable part, if indeed not in the main, such opposition stems from a desire that desegregation not be undertaken at all. In consideration of the type of relief to be granted in any case, due consideration must be given to the character of the right to be protected. Appellants here seek effective protection for adjudicated constitutional rights which are personal and present. Consideration of a plea for delay in enforcement of such rights must be preceded by a showing of clear legal precedent therefor and some public necessity of a gravity never as yet demonstrated.

There are no applicable legal precedents justifying a plea for delay. As a matter of fact, relevant legal precedents preclude a valid plea for delay. And, an analysis of the non-legal materials relevant to the issue whether or not relief should be delayed in these cases shows that the process of gradual desegregation is at best no more effective than immediate desegregation.

WHEREFORE, we respectfully submit that this Court should direct the issuance of decrees in each of these cases requiring desegregation by no later than September of 1955.

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IN THE

Supreme Court of the United States

October Term, 1954

No. 1

OLIVER BROWN, ET AL., *Appellants,*

VS.

BOARD OF EDUCATION OF TOPEKA, ET AL., *Appellees.*

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DOROTHY E. DAVIS, ET AL., *Appellants,*

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COUNTY SCHOOL BOARD OF PRINCE EDWARD COUNTY, VIRGINIA, ET AL., *Appellees.*

No. 5

FRANCIS B. GEBHART, ET AL., *Petitioners,*

VS.

ETHEL LOUISE BELTON, ET AL., *Respondents.*

APPEALS FROM THE UNITED STATES DISTRICT COURTS FOR THE DISTRICT OF KANSAS, THE EASTERN DISTRICT OF SOUTH CAROLINA AND THE EASTERN DISTRICT OF VIRGINIA, AND ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF DELAWARE, RESPECTIVELY

REPLY BRIEF FOR APPELLANTS IN NOS. 1, 2 AND 3 AND FOR RESPONDENTS IN NO. 5 ON FURTHER REARGUMENT

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REPLY BRIEF FOR APPELLANTS IN NOS. 1, 2 AND 3 AND FOR RESPONDENTS IN NO. 5 ON FURTHER REARGUMENT

The briefs filed on this reargument by appellees and *amici curiae* (with the exception of those in Nos. 1 and 5, and the brief filed on behalf of the Attorney General of The United States) are similar in substance despite some differences in details. Our reply to them can, therefore, be made in one joint brief.

ARGUMENT

Briefs Filed by Appellees and State Attorneys General Do Not Offer Any Affirmative Plan for Desegregation but Are Merely Restatements of Arguments in Favor of Interminable Continuation of Racial Segregation.

In our Brief on Further Reargument, we stated: [1]

> Much of the opposition to forthwith desegregation does not truly rest on any theory that it is better to accomplish it gradually. In considerable part, if indeed not in the main, such opposition stems from a desire that desegregation not be undertaken at all.

Similarly, the briefs filed at this time, both by appellees and state attorneys general seems to be directed against ending racial segregation in our time, rather than toward desegregation within a reasonable time. First, these briefs do not in fact offer any affirmative plan or elements of such a plan for accomplishing the task of desegregation. Secondly, and equally significant, the main reasons now proffered in support of indefinite delay are identical with arguments previously advanced for denying relief on the merits.

This Court has decided that racial segregation is unconstitutional—that it is a practice, moreover, which has

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[1] Brief for Appellants in Nos. 1, 2 and 3 and for Respondents in No. 5 on Further Reargument, 1954 Term, p. 31.

such effects on its victims that it can only be described as abhorrent. Yet, in answering questions 4 and 5, propounded by the Court, the States do not even get around to what must, in the light of that decision, be the main problem underlying those questions: How can this practice be most expeditiously done away with? Reasons for delay, which would seem to occupy at best a subsidiary position, are the sole preoccupation of state counsel, and the affirmative problem gets virtually no attention.[2]

The brief of the Attorney General of Florida does contain a Point entitled "Specific Suggestions to the Court in Formulating a Decree."[3] But, the effect of the suggested plan[4] would be to subject the constitutional rights of Negro children to denial on the basis of such a variety of intangible factors that the plan itself cannot be seriously regarded as one for implementing the May 17th decision.

Each individual Negro child must, under the Florida plan, petition a court of the first instance for admission to an unsegregated school, after exhausting his administrative remedies. It is up to him to establish to that court's satisfaction that there exists no "reasonable grounds" for delay in his admission. "Reasonable grounds" include lack of a reasonable time to amend the state school laws, good faith efforts of the school board in promoting citizens' educational committees, administrative problems, and "evidence of . . . a strong degree of *sincere* opposition and sustained hostility" [emphasis supplied] giving the school board ground to believe that

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[2] It is true that Delaware and Kansas catalogue the progress they have made thus far in accomplishing integration. But both states plead for delay without offering any valid reasons therefor.

[3] Brief of the Attorney General of the State of Florida as *amicus curiae*, pp. 57-65. Hereinafter, citations to briefs of appellees and *amici curiae* will be abbreviated. See, e.g., fn. 5, *infra*.

[4] Set out commencing at p. 61 of the Florida Brief.

admission of the applicant would " . . . create emotional responses among the children which would seriously interfere with their education." In other words, the applicant's right is to be postponed until everything seems entirely propitious for granting it. It is submitted that this is not a plan for granting rights, but a plan for denying them just as long as can possibly be done without a direct overruling of the May 17th decision.

Lest there be any doubt about this, the final criterion for admission to unsegregated schooling should be quoted:[5]

> (6) Evidence that the petitioner's application was made in good faith and not for *capricious* reasons. Such evidence should demonstrate:
>
> (a) That the petitioner personally feels that he would be handicapped in his education, either because of lack of school plant facilities or psychological or sociological reasons if his application for admission is denied.
>
> (b) That the petitioner is not motivated in his application solely by a desire for the advancement of a racial group on economic, social or political grounds, as distinguished from his personal legal right to equality in public school education as guaranteed by the 14th Amendment. This distinction should be carefully drawn [emphasis supplied].

Where the devisers of a plan are disposed to characterize opposition to desegregation as "sincere" and reasons for desiring admission as "capricious", we cannot be surprised at a rather peculiar procedural consequence of the dispensation they set up. The "petitioner", if he is to make timely application, exhaust his administrative remedies, and allow

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[5] Florida Brief, p. 63.

time for appeal, will have to draw this fine distinction at about four years of age, if he is to start the first grade in a desegregated school. Out of the mouths of babes and sucklings will have to come a wisdom in self-analysis which surely has never in the history of this country been required of any applicant for relief from the denial of a personal constitutional right. The Florida Brief is no real exception to the statement that none of the States has offered any plan for actually implementing the decision of this Court.

The quality and thrust of the reasons now advanced for delay may best be evaluated by noting that (except for those that deal with purely administrative matters obviously requiring little time for solution) they are arguments which were advanced at an earlier stage in this litigation as grounds for denying relief on the merits, and now, under slightly altered guise, they walk again after their suposed laying to rest on May 17. Thus, the impossibility of procuring community acceptance of desegregation, urged earlier as a ground for decision on the merits,[6] now turns up as an argument for indefinite postponement [7] with no convincing reasons given for supposing that community attitudes will change within the segregated pattern.

The prediction that white parents will withdraw their children from public schools is repeated,[8] with the implied hope, no doubt, that at some remote date they will have attained a state of mind that will result in their leaving their children in school. "Racial tensions" are again

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[6] South Carolina Brief (1952) p. 27. Cf. *Id.* at p. 35; Virginia Brief (1952) pp. 24-25.

[7] Virginia Brief (1954) p. 13; Delaware Brief (1954) pp. 16, 25; Florida Brief (1954) p. 201 ff.; Texas Brief (1954) pp. 16-17; North Carolina Brief (1954) pp. 7-8.

[8] *Compare* Florida Brief (1954) pp. 26-27 and North Carolina Brief (1954) pp. 36-37 *with* Virginia Brief (1952) p. 30.

predicted.[9] Negro teachers may lose their jobs.[10] Violence is warned of.[11] The people and the legislature will abolish the school system or decline to appropriate money for its support.[12]

All these are serious matters, but we have elsewhere shown solid reason for believing that those dire predictions, one and all, are unreliable. There is no reason for supposing that delay can minimize whatever unpleasant consequences might follow from the eradication of this great evil. Here, however, the point is that, where these arguments are resuscitated as grounds for delay, the inference is that their sponsors favor delay as long as present conditions prevail—that, in other words, they now want to delay desegregation just as long as the conditions exist which they formerly regarded as sufficient grounds for imposing segregation as a matter of legal right. The distinction is too fine to make such practical difference, either to the Negro child who is growing up or to this Court.

That it is opposition to the principle of the May 17th decision that animates these briefs is made clear by noting that the equality of schools, *Plessy* style, is now being urged as a ground for delay.[13] Nothing could make it

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[9] *Compare* Florida Brief (1954) p. 95 *with* Virginia Brief (1952) p. 27.

[10] *Compare* Florida Brief (1954) pp. 31-32; North Carolina Brief (1954) pp. 24-25; and Texas Brief (1954) pp. 10-11, *with* Virginia Brief (1952) p. 31.

[11] *Compare* North Carolina Brief (1954) p. 37 and Florida Brief (1954) p. 25 *with* South Carolina Brief (1952) p. 27.

[12] *Compare* North Carolina Brief (1954) p. 36; Virginia Brief (1954) p. 15; and Arkansas Brief (1954) pp. 7-8 *with* South Carolina Brief (1952) p. 27.

[13] *Compare* North Carolina Brief (1954) pp. 25-35, 43; Texas Brief (1954) pp. 2-4; and Maryland Brief (1954) p. 10 *with* Virginia Brief (1952) pp. 18-19 and South Carolina Brief (1952) pp. 8-9.

clearer, moreover, that many responsible officials, taking a realistic view, will not regard the "separate but equal" doctrine as abolished until this Court orders its abandonment in practice. Most significant here is the *amicus curiae* brief of the Attorney General of Texas which, after making a straight-out *Plessy* argument, continues with the statement: "However, if the occasion arises whereby we are compelled to abolish segregation in Texas, it should be a gradual adjustment in view of the complexities of the problem" (p. 4).

Opinion Polls Are Immaterial to the Issues Herein and Do Not Afford Any Basis to Support An Argument that a Gradual Adjustment Would Be More Effective.

Several of the briefs filed herein refer to polls of public opinion in their respective States in support of arguments to postpone desegregation indefinitely.[14] These polls appear to have been made for the purpose of sampling opinions of various groups within the State as to whether they approved of the May 17th decision and whether they thought it could be enforced immediately without friction.

The information as to racial hostility obtained from these polls is indecisive of the issues before this Court. In *Buchanan* v. *Warley*, 245 U. S. 60, 80, this Court stated:

> That there exists a serious and difficult problem arising from a feeling of race hostility which the law is powerless to control, and to which it must give a measure of consideration, may be freely admitted. But its solution cannot be promoted by depriving citizens of their constitutional rights and privileges.

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[14] Texas Brief, pp. 16-17; Virginia Brief pp. 13-14; North Carolina Brief pp. 7-9; Florida Brief pp. 23-24, 105 ff; Delaware Brief p. 12.

We believe the same answer should be given to any suggestion that the enforcement of constitutional rights be deferred to a time when it will have uniform public acceptance.

Even if relevant, results of polls are often not conclusive. For example, the Florida survey polled eleven "leadership" groups. These groups give evidence of a very high degree of "willingness" to comply. Although peace officers are greatly opposed to desegregation (Table 3, p. 138), only two of the eleven groups would not positively comply, and in those cases there is a very even division (Table 4, p. 139). Overall, six of the eleven groups are not opposed to the decision (Table 3, p. 138); 84.5% of white principals and supervisors who, would be charged with the duty of implementation, would comply (Table 4, p. 139). A majority of all groups expect neither mob violence nor "serious violence" (Table 5, p. 140).

Moreover, such polls are not a valid index of how the individuals questioned will in fact act in the event of desegregation. Modern psychological research shows that, especially in the case of broad public issues, many persons simply "do not follow through even on actions which they say they personally will take in support of an opinion." [15]

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[15] BUCHANAN, KRUGMAN AND VAN WAGENEN, AN INTERNATIONAL POLICE FORCE AND PUBLIC OPINION 13 (1954). For other studies dealing with the discrepancy between verbal statements and actions, see LINK AND FREIBERG, "THE PROBLEM OF VALIDITY VS. RELIABILITY IN PUBLIC OPINION POLLS", 6 PUBLIC OPINION QUARTERLY 87-98, esp. 91-92 (1942); JENKINS AND CORBIN, "DEPENDABILITY OF PSYCHOLOGICAL BRAND BAROMETERS II, THE PROBLEM OF VALIDITY", 22 JOURNAL OF APPLIED PSYCHOLOGY 252-260 (1938); HYMAN, "DO THEY TELL THE TRUTH?", 8 PUBLIC OPINION QUARTERLY 557-559 (1944); SOCIAL SCIENCE RESEARCH COUNCIL, COMMITTEE ON ANALYSIS OF PRE-ELECTION POLLS AND FORECASTS 302-303 (1949); LA PIERE, "ATTITUDES VS. ACTIONS", 13 SOCIAL FORCES 230-237 (1934); DOOB, PUBLIC OPINION AND PROPAGANDA 151 (1948); HARTLEY AND HARTLEY, FUNDAMENTALS OF SOCIAL PSYCHOLOGY 657 (1952). See also *Irvin* v. *State*, 66 So. 2d 288, 290-292 *cert. denied* 346 U. S. 927, *reh. denied* 347 U. S. 914.

The Attorney General of Texas sets out in his brief in these cases a survey by the "Texas Poll" showing 71% disapproval of the May 17th decision and 65% approval of continued segregation notwithstanding this Court's decision. It is interesting to note that in *Sweatt* v. *Painter*, 339 U. S. 629, respondents included in their brief a survey made by the same "Texas Poll" showing that 76% of all Texans were "against Negroes and whites going to the same universities." However, this Court ordered Sweatt admitted to the University of Texas. He and other Negroes attended the University.[16] Since then Negroes have been admitted to and are attending this and other public universities in twelve southern States.[16a]

Finally, there is nothing to indicate that an extended delay in ordering the elimination of all segregation will improve public attitudes or eliminate the objections presently interposed. Clearly the polls are irrelevant and should be so treated by this Court.

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[16] It is also significant that many municipal junior colleges in Texas have also desegregated their student bodies. See SOUTHERN SCHOOL NEWS, October 1, 1954, p. 13, c. 5.

[16a] JOHNSON, "PUBLIC HIGHER EDUCATION IN THE SOUTH", 23 JOURNAL OF NEGRO EDUCATION 317 (1954), especially at 328 where Dr. Johnson, University of North Carolina Sociologist, concludes:

> The transition from complete segregation to some degree of integration of Negroes into the publicly-supported institutions of higher learning in the South has already been accomplished in all except five of the Southern states, and most of this change has occurred in the brief period, 1948-1953. Despite numerous predictions of violence, this transition has been accomplished without a single serious incident of interracial friction.

The Wide Applicability of the Decision in These Cases Should Not Affect the Relief to Which Appellants Are Entitled.

Effort is made throughout the briefs for appellees and the several attorneys general to balance the personal and present rights here involved against the large number of children of both races now attending public school on a segregated basis. This argument is made for a twofold purpose: to escape the uniformity of decisions of this Court on the personal character of the rights involved and, secondly, to destroy the present character of the right involved.

Of course, the decision of this Court in the instant cases will have wide effect involving public school systems of many states and many public school children. The mere fact of numbers involved is not sufficient to delay enforcement of rights of the type here involved.[17]

On the face of it, their position is both ill-taken and self-defeating. That it is ill-taken becomes clear when the suggestion itself is clearly stated; obviously, there is nothing in mere numerousness as such which has any tendency whatever to create or destroy rights to efficacious legal relief. Behind every numeral is a Negro child, suffering the effects spoken of by the Court on May 17. It is a manifest inconsequence to say that the rights or remedial needs of each child are diminished merely because others

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[17] We put to one side as obviously immaterial the mere technical character of these suits as class actions under Rule 23(a)(3). Obviously, the mere joinder of plaintiffs in a spurious class suit for reasons of convenience cannot have any effect on the nature of the rights asserted or on the availability of normal relief remedy. Whether a suit is or is not a class action tells us little, in this field of law, as to the magnitude of the interests involved: *Sweatt* v. *Painter* was an individual mandamus suit, but the effect of that decision spread throughout the segregating states.

are in the same position. That this argument is self-defeating emerges when it is considered that its tendency is simply to establish that we have to do with an evil affecting a great many people; presumably, the abolition of a widespread evil is even more urgent than dealing with isolated cases of wrongdoing.

This Court has consistently treated the personal rights of litigants on a personal basis. Every leading case involving discrimination against Negroes has necessarily and demonstrably involved large numbers of people; yet this Court has given present relief on a personal basis to those who showed themselves entitled to it, without any hint of the possibility that the rights of citizenship are diminished because many people are being denied them. The *Sweatt*, *Sipuel* and *McLaurin* cases and *Smith* v. *Allwright*, all, as was well known to this Court and to the country, involved not merely the individuals or class-plaintiffs or geographical subdivision actually before the Court, but also the whole framework of law school, graduate school or primary election segregation. All major constitutional cases involve large numbers of people. Yet there is not a hint, in words or in action, in any past case, to the effect that the wide applicability of a decision was considered material to the right to relief. It is unthinkable that this Court would apply any such doctrine to limit the enjoyment of constitutional rights in general; there is no reason for its making a special and anomalous exception of the case at bar.

Actually, to point to the vast numbers of people whose lives will be affected by the relief granted here is only a diffuse way of raising all the questions as to the consequences of immediate desegregation. We have dealt with these questions elsewhere. The suggestion that mere numerousness makes a difference adds nothing new, but merely serves to confuse the issues by diverting attention from the extremely personal plight of each child, and from his need for present relief.

Average Differences in Student Groups Have No Relevance to the Individual Rights of Pupils: Individual Differences Can Be Handled Administratively Without Reference to Race.

Having attempted to subordinate appellants' personal and present constitutional rights to an alleged overriding consideration of the large numbers of people involved, these briefs for appellees then seek to further limit the individual rights of Negro students by broad characterizations of group intelligence, group morality and health.[18] Specifically, it is pointed out that statistics show that *on the average* Negro children in segregated schools score lower on achievement tests and are *in general* more retarded culturally than white children. This data, contrary to the conclusions advanced thereupon, merely underscores and further documents the finding quoted in this Court's opinion:

> "Segregation of white and colored children in public schools has a detrimental effect upon the colored children. The impact is greater when it has the sanction of the law; for the policy of separating the races is usually interpreted as denoting the inferiority of the Negro group. A sense of inferiority affects the motivation of a child to learn. Segregation with the sanction of law, therefore, has a tendency to [retard] the educational and mental development of Negro children and to deprive them of some of the benefits they would receive in a racial[ly] integrated school system."

We have come too far not to realize that educability and absorption and adoption of cultural values has nothing to do with race. What is achieved educationally and culturally, we now know to be largely the result of opportunity

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[18] North Carolina Brief, pp. 39-41; Florida Brief, pp. 19-21, 189.

and environment.[19] That the Negro is so disadvantaged educationally and culturally in the states where segregation is required is the strongest argument against its continuation for any period of time. Yet those who use this argument as a basis for interminable delay in the elimination of segregation in reality are seeking to utilize the product of their own wrongdoing as a justification for continued malfeasance.

Our public school systems have grown and improved as an American institution. And in every community it is obvious that children of all levels of culture, educability, and achievement must be accounted for within the same system. In some school systems the exceptional children are separated from the rest of the children. In others there are special classes for retarded children, for slow readers and for the physically handicapped. But these factors have no relation to race. These are administrative problems with respect to conduct of the public school.

In the past, large city school systems, North and South, have had the problem of absorbing children from rural areas where the public schools and cultural backgrounds were below the city standards. On many occasions these migrations have been very sudden and in proportionately very large numbers. This problem has always been solved as an administrative detail. It has never been either insurmountable or has it been used as an excuse to force the rural children to attend sub-standard schools. Simi-

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[19] KLINEBERG, RACE DIFFERENCES: THE PRESENT POSITION OF THE PROBLEM, 2 INTERNATIONAL SOCIAL SCIENCE BULLETIN 460 (1950); MONTAGUE, STATEMENT ON RACE, THE UNESCO STATEMENT BY EXPERTS ON RACE PROBLEMS 14-15 (1951); MONTAGUE, MAN'S MOST DANGEROUS MYTH: THE FALLACY OF RACE 286 (1952); KIRKPATRICK, PHILOSOPHY OF EDUCATION 399-433 (1951). See KLINEBERG, RACE AND PSYCHOLOGY, UNESCO (1951); ALLPORT, THE NATURE OF PREJUDICE (1954); COMAS, RACIAL MYTHS, UNESCO (1951).

larly, large cities have met without difficulty the influx of immigrants from foreign countries.

Cultural and health standards have always been maintained in public schools and there could be no objection to the continuation of such standards without regard to race. All social scientists seem to be in agreement that race and color have no connection whatsoever with a student's ability to be educated. Achievement and cultural deficiencies are nonracial in character, also. Hence these factors in no wise relate to questions posed as to whether desegregation should take place immediately or over an extended period.

Perhaps the main reasons for rejecting appellees' argument are that the conditions they complain of can never be remedied as long as segregation in public schools is continued and these so-called problems, *i.e.*, average on achievement tests, health, etc., are administrative problems which can be solved by recognized administrative regulations made to fit the problems without regard to pigmentation of the skin. It is significant that appellees and the Attorneys-General who advance these arguments do not give any hope to anyone that the continuation of segregated public education will ever remove these problems which are the product of this segregation.

On the other hand, appellants have shown in their Brief on Further Reargument that on the basis of substantial documented experience: "There is no basis for the assumption that gradual as opposed to immediate desegregation is the better, smoother or more 'effective' mode of transition. On the contrary, there is an impressive body of evidence which supports the position that gradualism, far from facilitating the process, may actually make it more difficult; that, in fact, the problems of transition will be a good deal less complicated than might be forecast by appellees. Our submission is that this, like many wrongs, can be easiest and best undone, not by 'tapering off' but by forthright action" (p. 31).

Official Reactions in States Affected by the May 17th Decision Make it Plain that Delay Will Detract From Rather Than Contribute to the "Effectiveness" of the Transition to Desegregated Schools.

Events occurring in the states affected by the decision of May 17, 1954, do not support the suggestions of appellees and *amici curiae* that further (and limitless) postponement of relief to Negro children will assure an "effective" adjustment from segregated to non-segregated school systems. In terms of legislative, executive or administrative reaction, the southern and border states may now be grouped in three loose categories:

(1) Those which have not waited for further directions from the Court, but have undertaken desegregation in varied measure during the current school year. Typical of the states falling in this category are Delaware,[20] Kansas,[21] Missouri,[22] and West Virginia.[23] Although not a state, the District of Columbia would fall within this group.

(2) Those which have decided to await a decision on the question of relief but have indicated an intention to

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[20] Brief for Appellants in Nos. 1, 2 and 3 and for Respondents in No. 5 on Further Reargument, pp. 4-7; Brief for Petitioners on the Mandate in No. 5, pp. 10-12.

[21] Brief for Appellants in Nos. 1, 2 and 3 and for Respondents in No. 5 on Further Reargument, pp. 3-4; Supplemental Brief for the State of Kansas on Questions 4 and 5 Propounded by the Court, pp. 13-22; Supplemental Brief for the Board of Education, Topeka, Kansas on Questions 4 and 5 Propounded by the Court, pp. 2-4.

[22] Southern School News, September 3, 1954, p. 9, c. 2-5; *Id.*, October 1, 1954, p. 10, c. 1-5; *Id.*, November 4, 1954, p. 12, c. 1-5; *Id.*, December 1, 1954, p. 10, c. 1-5; *Id.*, January 6, 1955, p. 11, c. 1; *Id.*, February 3, 1955, p. 15, c. 1-5.

[23] Southern School News, October 1, p. 14, c. 1, 5; *Id.*, January 6, 1955, p. 2, c. 4-5.

obey the Court's directions. Kentucky,[24] Oklohoma,[25] and Tennessee[26] are among the states in this category.

(3) Those which have indicated an intention to circumvent the decision of this Court or interminably delay the enjoyment by Negro children of their constitutionally protected rights not to be segregated in public schools. Included in this category are states like South Carolina[27] and Mississippi,[28] which have enacted legislation designed to nullify any decision of this Court in these cases, and states like Virginia[29] and Florida,[30] where either the governors or special legislative committees studying the problem have recommended that "every legal means" be used to preserve segregated school systems.[31]

Against this background of state reaction to the decision of May 17, 1954, it is clear that postponement of relief will serve no purpose. The states in the first category have

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[24] SOUTHERN SCHOOL NEWS, September 3, 1954, p. 7, c. 3; *Id.*, November 4, 1954, p. 16, c. 1; *Id.*, December 1, 1954, p. 9, c. 1, 3.

[25] SOUTHERN SCHOOL NEWS, February 3, 1955, p. 10, c. 1-2; *Id.*, March 3, 1955, p. 16, c. 1; THE NEW YORK TIMES, April 6, 1955, p. 20, c. 5.

[26] SOUTHERN SCHOOL NEWS, October 1, 1954, p. 11, c. 1; *Id.*, December 1, 1954, p. 12, c. 4; NEW YORK POST, March 16, 1955, p. 58, c. 4.

[27] SOUTHERN SCHOOL NEWS, September 3, 1954, p. 12, c. 1-2; *Id.*, February 3, 1955, p. 3, c. 2-4; *Id.*, March 3, 1955, p. 14, c. 1-3.

[28] SOUTHERN SCHOOL NEWS, September 3, 1954, p. 8, c. 3; *Id.*, October 1, 1954, p. 9, c. 4-5; *Id.*, November 4, 1954, p. 11, c. 4-5; *Id.*, January 6, 1955, p. 10, c. 1-2; THE NEW YORK TIMES, April 6, 1955, p. 20, c. 5.

[29] SOUTHERN SCHOOL NEWS, February 3, 1955, p. 10, c. 4.

[30] SOUTHERN SCHOOL NEWS, January 6, 1955, p. 6, c. 2.

[31] Indeed, Governor Marvin B. Griffin of Georgia has asserted: "However, if this court is so unrealistic as to attempt to enforce this unthinkable evil upon us, I serve notice now that we shall resist it with all the resources at our disposal and we shall never submit to the proposition of mixing the races in the classrooms of our schools."

already begun to implement this Court's decision and any delay as to them may imperil the progress already made.[32] The states in the second category have indicated a willingness to do whatever this Court directs and there is certainly no reason for delay as to them. The probable effect of delay, as to states in the third category, must be evaluated in the light of their declared intentions; we are justified in assuming that it would have no affirmative effect, but would merely provide additional time to devise and put into practice schemes expressly designed to thwart this Court's decision.

Conclusion

Appellants recognize that the problems confronting this Court, as it turns to the implementation of its decision in these cases, are of primary magnitude. Their high seriousness is enhanced by the fact that sovereign states are in effect, though not formally, at the bar and that the evil to which the Court's decree must be directed is no transitory wrong but is of the essence of the social structure of a great section of our nation.

Yet, it should be borne in mind that the very magnitude of these problems exists because of the assumption, tacitly indulged up to now, that the Constitution is not to be applied in its full force and scope to all sections of this country alike, but rather that its guarantees are to be enjoyed, in one part of our nation, only as molded and modified by the desire and customs of the dominant component of the sectional population. Such a view, however expressed, ignores the minimum requirement for a truly national constitution. It ignores also a vast part of the

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[32] See, *e.g.*, *Steiner* v. *Simmons*, 111 A. 2d 574 (Del. 1955), rev'g. 108 A. 2d 173 (Del. 1954). There the Supreme Court reversed a chancery court determination that forthwith desegregation was proper under the decision of this Court of May 17, 1954.

reality of the sectional interest involved, for that interest must be composed of the legitimate aspirations of Negroes as well as whites. It certainly ignores the repercussions which any reluctance to forthrightly enforce appellants' rights would have on this nation's international relations. Every day of delay means that this country is failing to develop its full strength.

The time has come to end the division of one nation into those sections where the Constitution is and those where it is not fully respected. Only by forthright action can the country set on the road to a uniform amenability to its Constitution. Finally, the right asserted by these appellants is not the only one at stake. The fate of other great constitutional freedoms, whether secured by the Fourteenth Amendment or by other provisions, is inevitably bound up in the resolution to be made in these cases. For delay in enforcement of these rights invites the insidious prospect that a moratorium may equally be placed on the enjoyment of other constitutional rights.

In disposing of the great issues before it, this Court should do no less than order the abolition of racial segregation in public education by a day certain, as heretofore set forth in Appellants' Brief on Further Reargument.

Respectfully submitted,

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IN THE

Supreme Court of the United States

October Term, 1954

No. 1

OLIVER BROWN, ET AL., *Appellants,*

VS.

BOARD OF EDUCATION OF TOPEKA, ET AL., *Appellees.*

No. 2

HARRY BRIGGS, JR., ET AL., *Appellants,*

VS.

R. W. ELLIOTT, ET AL., *Appellees.*

No. 3

DOROTHY E. DAVIS, ET AL., *Appellants,*

VS.

COUNTY SCHOOL BOARD OF PRINCE EDWARD COUNTY, VIRGINIA, ET AL., *Appellees.*

No. 5

FRANCIS B. GEBHART, ET AL., *Petitioners,*

VS.

ETHEL LOUISE BELTON, ET AL., *Respondents.*

APPEALS FROM THE UNITED STATES DISTRICT COURTS FOR THE DISTRICT OF KANSAS, THE EASTERN DISTRICT OF SOUTH CAROLINA AND THE EASTERN DISTRICT OF VIRGINIA, AND ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF DELAWARE, RESPECTIVELY

MEMORANDUM BRIEF FOR APPELLANTS IN NOS. 1, 2 AND 3 AND FOR RESPONDENTS IN NO. 5 ON FURTHER REARGUMENT WITH RESPECT TO THE EFFECT OF THE COURT'S DECREE

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Preliminary Statement

During oral argument question was raised concerning the class suit aspect of these cases—the extent of the class and effect of a decree on members of the class not before the Court. The Court then requested appellants to file this memorandum.

I

These Are Spurious Class Suits As Defined by Rule 23a(3) of the Federal Rules of Civil Procedure.

The complaint in each of the cases was filed by a number of Negro public school pupils enrolled in a local public school system and their parents or guardians, on behalf of themselves and an untold number of unnamed persons "similarly situated". The defendants in all of the cases were local public school authorities, *i.e.*, the local boards of education where they were incorporated bodies, the members of local school boards and local superintendents of schools. The gravamen of every complaint was that the defendants had operated and maintained the local public school system under their control and supervision on a racially segregated basis pursuant to state constitutional and/or statutory provisions; that defendants had denied both the named and unnamed minor Negro children admission to public schools set apart for white children, solely on the grounds of race or color; that both the named and unnamed minor Negro children had suffered discriminatory treatment and had been irreparably damaged thereby; and that as a result of this the named plaintiffs and all others similarly situated had been denied rights protected under the Fourteenth Amendment to the Federal Constitution. The relief sought was a declaratory judgment which decreed the unconstitution-

ality of the state policy authorizing racially segregated schools plus an injunction restraining defendants from enforcing such legislation and from making any distinction based on race or color among children attending local public schools.

In view of the foregoing summary of the complaints, it is clear that there is in each case a specification of the essentials of the third or "spurious" type of class suit defined in Rule 23(a) of the Federal Rules of Civil Procedure.[1]

In *Briggs* v. *Elliot*, the class represented includes all Negro children within the statutory age limits eligible to attend public schools and in fact attending such schools in School District No. 22 and the Summerton High School District (parts of which now form School District No. 1), Clarendon County, South Carolina (R. 4-5).[2] It also

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[1] Rule 23 of the Federal Rules of Civil Procedure provides as follows:

(a) Representation. If persons constituting a class are so numerous as to make it impracticable to bring them all before the Court, such of them, one or more, as will fairly insure the adequate representation of all may, on behalf of all, sue or be sued, when the character of the right sought to be enforced for or against the class is

(1) joint, or common, or secondary in the sense that the owner of a primary right refuses to enforce that right and a member of the class thereby becomes entitled to enforce it;

(2) several, and the object of the action is the adjudication of claims which do or may affect specific property involved in the action; or

(3) several, and there is a common question of law or fact affecting the several rights and a common relief is sought.

[2] The class as named in the complaint includes all the Negro children of school age in South Carolina. Obviously the class could only be that broad if the Court had before it a defendant with responsibility for all the State's public schools. Since these defendants' responsibilities are not that extensive, the class cannot be inclusive as the terms of the complaint.

includes their parents or guardians (R. 5); and both minor and adult members of the class are citizens of the United States and of the State of South Carolina and residents of Clarendon County. At the time of trial there were 959 minor members of the class (R. 50). During the recent oral argument before this Court, counsel for appellees reported that approximately 280 members of the class remain today (because of the redistricting in Clarendon County).

The class represented in *Davis* v. *County School Board of Prince Edward County, Virginia*, includes all Negroes within the statutory age limits to attend the public secondary schools of the Prince Edward County who possess the qualifications and satisfy all requirements for admission thereto (R. 9). Furthermore, the class here, as in the above suit, includes the parents or guardians of these children (R. 9); and all members are residents of Prince Edward County as well as citizens of the United States and the State of Virginia. The number of Negro children in the class was 450 at the time of trial (R. 81, 123), and the identical figure was given on reargument for the current population of the class.

In sum, the class represented in each case includes all Negro children attending or qualified to attend public schools in the local public school systems operated, maintained and controlled by the defendants.[3]

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[3] While the legal considerations are the same in both the Kansas and Delaware cases, we see no need to discuss these cases in this regard since all members of the class have been recognized by school authorities in those cases as entitled to benefit from adoption of a policy of school desegregation.

II

Decrees Should Embrace Unnamed Members of the Class So They May Benefit Therefrom Without the Necessity of Bringing Individual Suits.

This Court has faced the specific question of the effect of judgment in a spurious class suit in only one case, *Hansberry* v. *Lee,* 311 U. S. 32. There the question presented was whether absentee members of a class who appeared to be represented in a prior suit were bound by a judgment adverse to the interests they asserted in the second suit. The Court, reversing the Illinois Supreme Court, ruled that the state court's decision offended due process when it held that absentee members of a class were bound by a decision in a prior suit. This Court's ruling was based upon the fact that members of the class clearly had conflicting interests; and its conclusion was that where the first action was brought by some members of the class representing a single interest, other members were inadequately represented and could not, within the limits of due process, be bound by the decision. The Court did not indicate that in other circumstances, where representation was adequate, members of the class would not be bound by an adverse decision. In fact, the Court said at pp. 42-43:

> It is a familiar doctrine of the federal courts that members of a class not present as parties to the litigation may be bound by the judgment where they are in fact adequately represented by parties who are present, . . . or where for any other reason the relationship between the parties present and those who are absent is such as legally to entitle the former to stand in judgment for the latter.

Subsequently, federal courts have construed the decision in *Hansberry* v. *Lee* to mean, as applied to all

spurious class suits, that all members of the class whose interests are in accord with those of the plaintiff in the original action will be bound by an adverse decision. *Weeks* v. *Bareco Oil Co.*, 125 F. 2d 84 (C. A. 7th 1941). Cf. *Kentucky Home Mutual Life Ins. Co.* v. *Duling*, 190 F. 2d 797, 802 (C. A. 6th 1951). Thus, there is some indication that, absent exceptional circumstances which raise questions of due process, members of a class will be bound by an adverse decision.

But even if it be assumed that unnamed members of a class are not bound by an adverse decision in the prior class action, it does not follow that such members may not avail themselves of the benefits of a favorable decision in that suit. A substantial argument may be made that members of a class should in no case be bound by an adverse decision in which they did not participate, because they have not had their day in court. But no comparable argument can be made for denying to members of a class the benefits of a decision in favor of the class. For defendant has had his day in court and he has lost. Knowing that the suit was a class action, defendant has been put on notice to defend to the hilt, and he has no more reason to relitigate the controversy against absentee members than he has to do so against the immediate plaintiff. To allow all members of the class to share in the benefits of the judgment would work no prejudice to the defendant; rather it would save him a multiplicity of separate suits. See Kalven and Rosenfeld, *The Contemporary Function of the Class Suit*, 8 U. of Chi. L. R. 684, 713 (1941).

The question of the effect of a judgment has been litigated infrequently, for in many spurious class actions, especially those where injunctive and declaratory relief was sought, the benefits of such a decision automatically inured to all of the members of the class and nothing further was necessary to enforce their rights. See *McLaurin* v. *Okla-*

homa State Regents, 339 U. S. 637; *Tureaud* v. *Board of Supervisors, Etc.*, 116 F. Supp. 248, 249, 251 (E. D. La. 1953), rev'd on other grounds, 207 F. 2d 807, vacated and remanded, 347 U. S. 971; *Gonzales* v. *Sheeley*, 96 F. Supp. 1004, 1007, 1009 (D. Ariz. 1951); *Wilson* v. *Board of Supervisors*, 92 F. Supp. 986, 988 (E. D. La. 1950), aff'd, 340 U. S 909; *Johnson* v. *Board of Trustees of University of Kentucky*, 83 F. Supp. 797, 709-710 (E. D. Ky. 1949); *Mendez* v. *Westminster School Dist.*, 64 F. Supp. 544, 545, 551 (S. D. Cal. 1946), aff'd, 161 F. 2d 774 (school cases); *Morris* v. *Williams*, 149 F. 2d 703, 704, 709 (C. A. 8th 1945); *Alston* v. *School Board of City of Norfolk*, 112 F. 2d 992, 994, 997 (C. A. 4th 1940), cert. denied, 311 U. S. 693; *Davis* v. *Cook*, 80 F. Supp. 443, 444, 452 (N. D. Ga. 1948), rev'd on other grounds, 178 F. 2d 595; *Whitmyer* v. *Lincoln Parrish School Board*, 75 F. Supp. 686, 687, 688 (W. D. La. 1948); *McDaniel* v. *Board of Public Instruction*, 39 F. Supp. 638, 639, 641 (N. D. Fla. 1941); *Mills* v. *Board of Education of Anne Arundel County*, 30 F. Supp. 245, 248, 249, 251 (D. Md. 1939) (teachers' salary cases); *Davis* v. *Schnell*, 81 F. Supp. 872, 874, 881 (S. D. Ala. 1949), aff'd, 336 U. S. 933; *Brown* v. *Baskin*, 78 F. Supp. 933, 935, 942 (E. D. S. C. 1948), aff'd, 174 F. 2d 391, *Elmore* v. *Rice*, 72 F. Supp. 516, 517, 528 (E. D. S. C. 1947), aff'd, 165 F. 2d 387, cert. denied, 333 U. S. 875, (voting cases); *Dawson* v. *Mayor and City Counsel of Baltimore*, —— F. 2d —— (C. A. 4th, decided March 4, 1955), reversing 123 F. Supp. 193; *Lopez* v. *Seccombe*, 71 F. Supp. 769, 771, 772, (S. D. Cal. 1944) (public recreation cases).

Where the question has been litigated, however, it has been held that those entitled to benefits were all who were members of the class at time of entry of final judgment. *National Hairdressers and Cosmetologists Association, Inc.* v. *Philad Co.*, 41 F. Supp. 701 (D. Del. 1941), aff'd, 129

F. 2d 1020. Other federal courts in spurious class suits have allowed members of the class to participate in the fruits of a favorable decision by intervention after the decree has been rendered, or have indicated that intervention at this time would be the proper procedure. *York* v. *Guaranty Trust Co. of New York*, 143 F. 2d 503 (C. A. 2nd 1944), rev'd on other grounds, 326 U. S. 99; *Speed* v. *Transamerica Corp.*, 100 F. Supp. 461 (D. Del. 1951); *Wilson* v. *City of Paducah*, 100 F. Supp. 116 (W. D. Ky. 1951); *Tolliver* v. *Cudahy Packing Co.*, 39 F. Supp. 337 (E. D. Tenn. 1941); *Alabama Independent Service Station Assn.* v. *Shell Petroleum Corp.*, 28 F. Supp. 386 (N. D. Ala. 1939).

The court in *York* v. *Guaranty Trust Co. of New York*, *supra*, at page 529 approached the problem in practical and reasonable terms, saying:

> Since, any suit under clause (3), a judgment will not be res judicata for or against those of the class who do not intervene, we suggest that if, after trial, the court finds against the defendant, appropriate steps be taken to notify all such note holders [other members of the class] to intervene (if they have not theretofore done so), judgment to be entered in favor only of those who do so within a reasonable time.

Moreover, still other federal courts have by way of dicta regarded a judgment in a spurious class action as benefiting all members of the class. *Weeks* v. *Barco Oil Co.*, 125 F. 2d 84, 91 (C. A. 7th 1941); *Pennsylvania R. Co.* v. *United States*, 111 F. Supp. 80, 90 (D. N. J. 1953); *Pacific Fire Ins. Co.* v. *Reiner*, 45 F. Supp. 703 (E. D. La. 1942). See also *System Federation No. 91* v. *Reed*, 180 F. 2d 991 (C. A. 6th 1950), where the court by means of a strained construction of the character of the right enforced in a prior proceeding concluded that that suit was a "true" rather

than a "spurious" class suit and sustained a contempt proceedings instituted by an absentee member of the class on whose behalf the named plaintiffs had won a judgment enforcing seniority and promotional rights protected under the Railway Labor Act, 45 U. S. C. § 151 *et seq.*

Apart from these case authorities, the extention of the fruits of a favorable decree to unnamed members of the class would appear to follow from the mere existence of Rule 23(a)(3). If the rule were otherwise, what is denoted as a "spurious" class suit under Rule 23(a) would not be a class suit at all, but merely a device for permissive joinder. This is hardly a credible construction, for permissive joinder is amply provided for by Rule 20 of the Federal Rules. See Comment, 42 Ill L. R. 518, 523-524 (1947); Kalven and Rosenfeld, *supra*, 8 U. of Chi. L. R. at 699. One commentator who contends that a "spurious" class suit is really only a permissive joinder device, attempts to explain its inclusion in the Federal Rules by suggesting that it also enlarged federal jurisdiction by permitting the intervention of parties who do not meet federal jurisdictional requirements. 3 Moore's Federal Practice 3448 (2nd ed. 1948.) But, apart from the fact that this would be a rather curious approach to enlarging federal jurisdiction, Rule 82 of the Federal Rules specifically states that the Rules shall not be construed to extend federal jurisdiction.

Logic does not support any interpretation which would emasculate the operation of Rule 23(a)(3). The rule provides for a situation where the "parties are too numerous" to be brought before the court. But if all in the class must become parties of record before trial if they are to share in the judgment, the rule is reduced to saying that where it is impracticable to bring all the parties before the court, they must still all be brought before the court. In this connection it should be noted that Rule 23(c) provides that no class suit defined in 23(a) may be dismissed

or compromised without the approval of the court. There would be no need for such a provision if it were not contemplated that there would be absentee members who require protection because they would be affected by the decision. Finally, as previously noted, no policy can be advanced to support such a strained construction of the Rule. A defendant, to resist participation by members of the class cannot claim that he is not liable to them, but only that they should endure the inconvenience of bringing a separate suit. Defendant is reduced to the claim that justice has been made too convenient and too complete. See Kalven and Rosenfeld, *supra,* 8 U. of Chi. L. R. at 699-701.

Conclusion

As pointed out in the recent arguments before this Court, these are spurious class suits under subsection (3) of Rule 23(a). They were treated as class actions by the courts below and they were described as such in this Court's opinion in *Brown* v. *Board of Education,* 347 U. S. 483.

The foregoing considerations also establish that the class which the individual plaintiffs brought on behalf of themselves and others similarly situated is precisely defined as to its racial, educational, residential and familial characteristics, as to the declaratory and injunctive relief sought, and as to the nature of the right asserted. Defendants have had their day in court and there is no equitable consideration which would justify any further litigation with the members of the class who were not individually named. Moreover, there is ample support in both case authority and logic for the issuance of a judgment or decree which will be beneficial to all members of the class involved in the individual cases.

The Negro children before the Court in these cases are entitled to public education on a non-segregated basis. The

only way the relief can be meaningful to them is to abolish the policy of using race as a criterion for assignment of students. Thus, the only effective decree would be one which will enjoin the use of race in the assignment of *any* pupils in the school districts involved.

Therefore, we submit that this Court should enter a decree which will order the defendants to cease the conduct held unlawful in *Brown* v. *Board of Education, supra,* and which will command them to discontinue use of race or color as a criterion for admission of students. Indeed, this is the only way that the rights of even the named plaintiffs can be protected.

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APPENDIX

For the convenience of the Court, we are setting out in this appendix our suggestions as to the form of decree to be entered in these cases.

Form of Decree Suggested By Appellants

Judgment reversed and cause remanded to the District Court for proceedings not inconsistent with this Court's opinion, and entry of a decree containing the following provisions:

(1) Article XI, section 7, of the Constitution of South Carolina, and section 5377 of the Code of Laws of South Carolina of 1942, and other legislative provisions of South Carolina requiring, directing or permitting defendants to maintain racial segregation in public schools in School District No. 1 of Clarendon County, South Carolina, are unconstitutional and of no force and effect;

(2) Defendants, their successors in office and their agents, employees and all other persons acting under their direction and supervision, are forthwith ordered to cease using race as a basis of determining admission, assignment or attendance in public schools in School District No. 1 of Clarendon County, South Carolina, so that at a time no later than the school term commencing in September, 1955, plaintiffs, and all others similarly situated, will be attending schools on a basis not involving race;

(3) Defendants are ordered to file with the District Court by July 15, 1955, for approval by August 15, 1955, a plan showing what changes they have made in the existing method of determining the public schools pupils attend so that race no longer will be used as a criterion;

(4) The District Court is to retain jurisdiction to make whatever further orders it deems appropriate to carry out the foregoing.

Suggested Decree to Be Entered if the Supreme Court Decides It Should Exercise Its Equity Powers to Permit An Effective Gradual Adjustment To Be Brought About From Existing Segregated Systems To Systems Not Based On Color Distinctions

Judgment reversed and cause remanded to the District Court for proceedings not inconsistent with this Court's opinion, and the entry of a decree containing the following provisions:

(1) Article XI, section 7, of the Constitution of South Carolina and section 5377 of the Code of Laws of South Carolina of 1942 and other legislative provisions of South Carolina requiring, directing or permitting defendants to maintain racial segregation in public schools in School District No. 1 in Clarendon County, South Carolina are unconstitutional and of no force and effect;

(2) Defendants, their agents, employees, successors in office and all other persons acting under their direction and supervision are forthwith ordered to cease using race as a basis of determining admission, assignment and attendance in public schools in School District No. 1, Clarendon County, South Carolina so that beginning the next school term, (i.e. September, 1955) plaintiffs and all others similarly situated will be attending school on a basis not involving race;

(3) Notwithstanding the foregoing if the defendants or other responsible officials by August 15, 1955,

(a) show the District Court that the transition to a school system not based on race or color distinctions involves such administrative factors as would cause serious and substantial dislocation in the operation of public schools should admission beginning the next school term be ordered; *and*

(b) submit a plan which, after public hearing, the District Court finds

> (i) will eliminate as soon as feasible but in no event later than September 1, 1956, racial segregation in the public schools presently subject to defendants' authority or control, in School District No. 1, Clarendon County, South Carolina; and
>
> (ii) will provide for an effective commencement of the actual transition (i.e., the admission of some Negroes to non-segregated schools) by the beginning of the next school term (September 1, 1955),

the District Court may allow defendants additional time and make such orders as are necessary to permit the effectuation of such a program.

(4) Defendants are ordered to make detailed periodic reports showing the progress made in carrying out the approved plan;

(5) The District Court under no circumstances will extend the time to effect actual transition to a school system not based on race or color distinctions beyond September, 1956.

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Nos. 1, 2, 3, 4, 5

In the Supreme Court of the United States

OCTOBER TERM, 1954

No. 1

OLIVER BROWN, ET AL., APPELLANTS

v.

BOARD OF EDUCATION OF TOPEKA, ET AL.

No. 2

HARRY BRIGGS, JR., ET AL., APPELLANTS

v.

R. W. ELLIOTT, ET AL.

No. 3

DOROTHY E. DAVIS, ET AL., APPELLANTS

v.

COUNTY SCHOOL BOARD OF PRINCE EDWARD COUNTY, ET AL.

No. 4

SPOTTSWOOD THOMAS BOLLING, ET AL., PETITIONERS

v.

C. MELVIN SHARPE, ET AL.

No. 5

FRANCIS B. GEBHART, ET AL., PETITIONERS

v.

ETHEL LOUISE BELTON, ET AL.

BRIEF FOR THE UNITED STATES ON THE FURTHER ARGUMENT OF THE QUESTIONS OF RELIEF

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In the Supreme Court of the United States

OCTOBER TERM, 1954

No. 1[1]

OLIVER BROWN ET AL., APPELLANTS

v.

BOARD OF EDUCATION OF TOPEKA, SHAWNEE COUNTY, KANSAS, ET AL.

BRIEF FOR THE UNITED STATES ON THE FURTHER ARGUMENT OF THE QUESTIONS OF RELIEF

This brief is filed in response to the Court's invitation to the Attorney General of the United States to participate in the further argument of these cases on the questions of relief. It is now the settled law of the land that segregation of white and colored children in the public schools of a State or of the District of Columbia is unconstitutional. There remain for consideration and decision only the questions as to the decrees that should be entered in these cases in order to achieve compliance with the Court's ruling.

---

[1] Together with No. 2, *Harry Briggs, Jr., et al.* v. *R. W. Elliott, et al.*; No. 3, *Dorothy E. Davis, et al.* v. *County School Board of Prince Edward County, et al.*; No. 4, *Spottswood Thomas Bolling, et al.* v. *C. Melcin Sharpe, et al.*; and No. 5, *Francis B. Gebhart, et al.* v. *Ethel Louise Belton, et al.*

The views of the Government on these questions are set forth in this brief. At the outset it may be helpful to state, in summary fashion, our answers to the questions formulated by the Court (347 U. S. 483, 495–96):

> 4. Assuming it is decided that segregation in public schools violates the Fourteenth Amendment
>
> (a) would a decree necessarily follow providing that, within the limits set by normal geographic school districting, Negro children should forthwith be admitted to schools of their choice? *No.*
>
> (b) or may this Court, in the exercise of its equity powers, permit an effective gradual adjustment to be brought about from existing segregated systems to a system not based on color distinctions? *Yes.*
>
> 5. On the assumption on which questions 4 (a) and (b) are based, and assuming further that this Court will exercise its equity powers to the end described in question 4 (b),
>
> (a) should this Court formulate detailed decrees in these cases? *No.*
>
> (b) if so, what specific issues should the decrees reach? ---
>
> (c) should this Court appoint a special master to hear evidence with a view to recommending specific terms for such decrees? *No.*
>
> (d) should this Court remand to the courts of first instance with directions to frame decrees in these cases, and, if so, what

general directions should the decrees of this Court include and what procedures should the courts of first instance follow in arriving at the specific terms of more detailed decrees? *Yes. The provisions suggested for inclusion in the decrees are outlined at pp. 27–29, infra.*

I

THIS COURT HAS FULL POWER TO DIRECT SUCH RELIEF AS WILL BE MOST EFFECTIVE AND JUST

Question 4 need not detain the Court long. The Government, in its brief submitted on the previous reargument, reviewed the authorities bearing on the scope of the Court's remedial powers (Br. 152–167), and concluded that the Court has "undoubted power in these cases to enter such decrees as it determines will be most effective and just in relation to the interests, private and public, affected by its decision" (Br. 167). We noted that Congress has expressly empowered the Court, in fashioning effective relief in cases coming before it, to enter "such appropriate judgment, decree, or order, or require such further proceedings to be had as may be just under the circumstances" (28 U. S. C. 2106). This provision reflects the breadth and flexibility of judicial remedies which are available to the Court. The shaping of appropriate relief in the present cases, as all will agree, involves considerations of a most sensitive and

difficult nature. But, as was stated in our earlier brief (p. 154), "we believe there can be no doubt of the Court's *power* to grant such remedy as it finds to be most consonant with the interests of justice."

II

THE VINDICATION OF THE CONSTITUTIONAL RIGHTS INVOLVED SHOULD BE AS PROMPT AS FEASIBLE

The fashioning of relief in these cases does not call for the formulation or application of new or unusual legal principles. On the contrary, the task confronting the Court is one which presents itself whenever it has been judicially found that legal rights have been, and are continuing to be, violated. The question is always one of determining how, in the light of the facts presented and within the limits of the power possessed by it, the Court can best insure the removal of the condition of illegality in a manner comporting not only with the interests of the parties but also, to the extent it may be involved, with the public interest.

In many instances the solution to this problem is quite simple. The balancing of the relevant considerations may lead inescapably to the conclusion that the legitimate interests of all concerned require only immediate termination of the unlawful conduct. In such circumstances a court of equity normally does no more than to enter a decree enjoining that conduct. It is where the

scales are not so clearly tipped in that direction that the shaping of the appropriate remedy involves difficulties.

The Court recognized, in restoring these cases to the docket for further argument (347 U. S. at 495), that "the formulation of decrees in these cases presents problems of considerable complexity." These problems must be viewed in proper perspective. The starting point must be a recognition that we are dealing here with basic constitutional rights, and not merely those of a few children but of millions. These are class actions. Under the Court's decision the maintenance of segregated schools is in violation of the constitutional rights not only of the individual plaintiffs but of all other "similarly situated" colored children upon whose behalf the suits were brought. Relief short of immediate admission to nonsegregated schools necessarily implies the continuing deprivation of these rights. The "personal and present" right (cf. *Sweatt* v. *Painter,* 339 U. S. 629, 635) of a colored child not to be segregated while attending public school is one which, if not enforced while the child is of school age, loses its value. Hence any delay in granting relief is *pro tanto* an irretrievable loss of the right.

The unconstitutionality of racial segregation in public schools is no longer in issue. However, in considering whether any delay in granting full relief is justifiable, it must be borne in mind that continuation of school segregation has harmful

effects both on the individuals concerned and on the public. The right of children not to be segregated because of race or color is not a technical legal right of little significance or value. It is a fundamental human right, supported by considerations of morality as well as law. "To separate [colored children] from others of similar age and qualifications solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone" (347 U. S. at 494). Racial segregation affects the hearts and minds of those who segregate as well as those who are segregated, and it is also detrimental to the community and the nation.

In the absence of compelling reasons to the contrary, therefore, there should be no unnecessary delay in the full vindication of the constitutional rights involved in these cases, and if any delay is required, it should be kept to a minimum.

III

THE PUBLIC INTEREST REQUIRES AN INTELLIGENT, ORDERLY AND EFFECTIVE SOLUTION OF THE PROBLEMS THAT MAY BE ENCOUNTERED IN COMPLYING WITH THIS COURT'S DECISION IN PARTICULAR AREAS

No objective examination of the problems of relief can overlook the fact that the impact of the Court's decision holding racial segregation in public schools to be unconstitutional goes far beyond the areas and parties involved in these cases. As a binding precedent the decision requires the termination of segregation in school

systems in more than one-third of the States and in the District of Columbia.

Because public education is, as the Court has recognized (347 U. S. at 493), "perhaps the most important function of state and local governments," there is a public interest to be served in permitting the transition to be carried out in an orderly manner, so as to avoid needless dislocation or other impairment of the effective operation of the school systems concerned. A prime consideration in dealing with the problems of desegregation must be that the systems of public education in the United States should not be adversely affected. Public education is one of the glories of the United States, and an indispensable source of its power. The richest resources of the United States are its citizens, and, as the Court has observed (347 U. S. at 493), education "is the very foundation of good citizenship."

It must be recognized that racial segregation in public schools is not a separate and distinct phenomenon. It is part of a larger social pattern of racial relationships. The Court's decision in these cases has outlawed a social institution which has existed for a long time in many areas throughout the country—an institution, it may be noted, which during its existence not only has had the sanction of decisions of this Court but has been fervently supported by great numbers of people as justifiable on legal and moral grounds. The Court's holding in the present cases that segregation is a denial of constitutional rights involved an

express recognition of the importance of psychological and emotional factors; the impact of segregation upon children, the Court found, can so affect their entire lives as to preclude their full enjoyment of constitutional rights. In similar fashion, psychological and emotional factors are involved—and must be met with understanding and good will—in the alterations that must now take place in order to bring about compliance with the Court's decision. The practical difficulties which may be met in effecting transition to nonsegregated public school systems should therefore be taken into account in determining the most effective means for ending school segregation in particular areas. The Court itself has recognized, in restoring these cases to the docket for further argument on the questions of relief, that these difficulties cannot be resolved by a single stroke of the judicial pen.

Broadly speaking, therefore, the decrees in these cases should be framed to require a transition which achieves the most expeditious compliance with the constitutional mandate and at the same time permits the intelligent, orderly, and effective solution of the problems that may be encountered in desegregating school systems in particular areas.

IV

THE NATURE AND EXTENT OF THE PROBLEMS THAT THE DESEGREGATION OF PUBLIC SCHOOL SYSTEMS MAY ENTAIL WILL VARY FROM AREA TO AREA

As the Court has noted (347 U. S. at 495), there is a "great variety of local conditions,"

which will undoubtedly affect the nature and extent of the changes in public school systems and practices required to bring about compliance with its decision. Without elaborating in detail the structure and organization of the educational systems of the States and the District of Columbia, it is not difficult to outline some of the kinds of problems which may arise in making a transition to nonsegregated systems.

1. The implementation of any program for the desegregation of public school facilities will be, of course, the responsibility of no single individual or administrative body. Indeed, of all governmental activities, education is undoubtedly the most decentralized, its administrative and financial base being shared between the states and their political subdivisions. And the extent of local participation is brought into perhaps sharper focus by the fact that of the approximately 120,000 governmental units tabulated by the Census Bureau in 1951, more than 70,000 were school districts.[2]

The division of authority between state and local school officials customarily is delineated by the state legislature. In most jurisdictions, the state board of education and school superintendent have the statutory duty of making the broad policy decisions affecting the state school system as a whole, enforcing state laws relating to the

[2] U. S. Department of Commerce, *Statistical Abstract of the United States* (1952), p. 355.

operation of schools and, in general, insuring that all school units meet certain minimal standards. Local authorities, within the framework of state educational policy as embodied in statutes, regulations and directives, exercise control over the intimate details of school management within their district or other operating unit.

The problems that will confront authorities on the state level thus will be principally ones of revising state laws and regulations which were tailored to fit the needs of a segregated school system. In South Carolina, for example, the statutory formula now employed in the distribution of state funds for teachers' salaries requires that minimum enrollment and average daily attendance in each district be determined separately for each race.[3] In several jurisdictions, the law provides for school officials whose duties are limited to the supervision of Negro schools;[4] in others, the legislature has provided for entirely separate Negro and white school districts encompassing the same area.[5]

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[3] South Carolina Code (1952), §§ 21-251, 290. Cf. D. C. Code (1951 ed.), §§ 31-1110, 31-1112.

[4] See e. g., D. C. Code (1951 ed), §§ 31-670, 31-671; Anno. Code of Maryland (Flack ed., 1951), Art. 77, §§ 42 (4), 208.

[5] See e. g., Mississippi Code (1942 ed.) 6276. In some states separate Negro school districts are maintained even in the absence of a legislative requirement. In Delaware, for example, there are at least 42 such districts. It has been reported that at the next session of the Delaware General Assembly, legislation will be introduced to merge them with white school districts. See *Southern School News*, September 3, 1954, page 3.

2. Because local school authorities have considerable discretion respecting many facets of school administration, and because there is a wide variety in local conditions, it can be expected that, even within the same state, no two school districts will be faced with precisely the same problems in accomplishing an effective transition to nonsegregated school systems.

(a) In districts where there is more than one school, adjustments in the method employed for allocating students to particular schools may have to be made. In the majority of such districts, children are given little, if any, choice as to the school they are to attend. Instead, each school in the district is assigned a particular attendance area and the pupil must enroll in the facility within whose attendance boundaries he resides.

Many factors are taken into consideration in drawing these boundaries, foremost among ther being the size and character of the school, the geographical distribution of the school population in the district, and the ease and safety of public travel to and from school. In the case of segregated school systems, boundaries are formulated separately for white and colored facilities, with the result that the overall objective of making the maximum use of total school facilities and minimizing travel difficulties is seldom achieved. Changes in the racial character of a neighborhood frequently cause overcrowding in some schools while others operate at far below capacity.

Similarly, children of both races are often compelled to travel long distances to reach the segregated schools to which they are assigned.

The extent of the boundary alterations required, in the reformulation of school attendance areas on a non-racial basis, will vary. This is illustrated by the recent experience in the District of Columbia in recasting attendance boundaries on a wholly geographical basis. In the neighborhoods where there is little or no mixture of the races, and where school facilities have been fully utilized, it was found that the elimination of the racial factor did not work any material change in the territory served by each school. In biracial neighborhoods, however, the objective of securing maximum utilization of facilities, on a non-racial basis, could be achieved only by making radical revisions in the area covered by the formerly Negro and white schools.

In connection with the formulation of new attendance boundaries, school districts may be called upon to review or alter prevailing practices regarding pupil transfers. Because it is almost impossible to fix boundaries which do not work a hardship on any pupils, many communities now permit enrollment outside the attendance area of residence in exceptional circumstances. Pupils on the secondary school level occasionally are allowed to attend a school at a distance from their homes because it offers courses of instruction not otherwise available. Specialized needs of

mentally or physically handicapped children may cause them to be grouped together for instructional purposes. And pupils not possessing an adequate knowledge of the English language sometimes are placed in separate schools until that knowledge is acquired. While the allowance of transfers and special assignments for reasons of this character is fully warranted and undoubtedly will be continued, some districts may be confronted with efforts by students to attend schools in other areas for the sole and unjustifiable purpose of avoiding enrollment in a biracial facility.

(b) At the same time that procedures are devised for the assignment of pupils to schools on a basis not involving distinctions of color, some districts may have to readjust the use of their facilities. In low population rural areas now maintaining two schools solely by reason of the dual system, educational and economic considerations may dictate consolidation. There are several ways in which this consolidation might be accomplished. Where existing structures are small or otherwise inadequate, a new school might be constructed to accommodate all children. Another solution might be to close one of the schools and transfer its pupils to the other.

In areas where there is a considerable disparity in the quality and curricula of the former white and Negro schools, the problem of readjustment may be more troublesome. Parents will

be understandably reluctant to send their children to schools markedly inferior to those previously attended, or which do not provide courses of instruction that would have been begun or continued if no transfer had been required. While the long-range answer to a substantial part of this problem may be the improvement of substandard schools, or the construction of new ones, school administrators may have to devise stopgap methods—not involving continuation of racial segregation—to protect the interests of children now in school.

(c) Teachers may have to be reassigned and changes made in the method of their selection, with due regard to the safeguarding of seniority and tenure rights. In areas which now have separate eligibility lists for white and colored teachers, new lists combining applicants of both races may be established.[6] Salary differentials

[6] This step was taken in both the District of Columbia and in Baltimore. In the former, under the segregated system, Negro and white applicants for teaching positions took separate examinations conducted by separate boards of examiners. Performance on these qualifying examinations determined position on the eligibility lists maintained for applicants of each race and the lists in turn provided the sole basis of appointment. In June 1954, the boards of examiners were merged into a single board under the direct chairmanship of the superintendent of schools, teacher examinations were held on an integrated basis for the first time, and eligibility lists were consolidated. For each level of

may have to be eliminated.[7] And, on the supervisory level, in communities maintaining separate supervisors for Negro schools a general realignment of duties may be necessary.[8]

(d) Most rural and some urban areas provide transportation to and from schools. Communities which have maintained separate transportation facilities for the two races may have to reorganize schedules and routes. And some localities may discover that there will be a need

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instruction, there is now but a single list on which no reference is made to the race of any of the named individuals.

In Baltimore, the compilation of separate lists involved not only the grade received on a written examination, administered to white and colored alike, but in addition the results of an oral interview and the evaluation of the applicant's previous experience. In combining the lists, Baltimore did not disturb these criteria; nor was a change made in the established practice of selecting any one of the five highest ranking qualified individuals to fill a vacancy.

[7] In 1952, the average annual salaries of white and Negro classroom teachers in 12 Southern states were $2,740 and $2,389, respectively. A part of this differential may be explained by the fact that the average amount of college training possessed by the white teachers was slightly higher. And between 1940 and 1952, the gaps in both salary and training averages were substantially diminished. See Ashmore, *The Negro and The Schools* (1954), pp. 158–159.

[8] Baltimore's dual system, for example, had five assistant school superintendents serving on a systemwide basis and one assistant superintendent for Negro schools.

for additional vehicles or, conversely, that less equipment will be necessary.[9]

(e) A few school districts may have to compensate for differences in the educational backgrounds of newly integrated pupils. In localities where the segregated Negro facilities were inferior, colored students may find it difficult to pursue satisfactorily the same studies as white students in the same grades. School authorities faced with that problem may desire to give tests to determine the grade to which each student should be assigned. Or such tests might be employed for the purpose of selecting students for additional and intensified instruction in subjects in which they are deficient.

3. Because, as has been noted, the responsibility for the financial support of public education is distributed between the state and its subdivisions, the economic burdens incident to the implementation of integration also will fall upon several levels of government. These burdens, however, will flow largely from the present inequality, in a physical sense, of separate Negro schools. As a consequence, even if the dual system were to continue, many areas would be faced

[9] The requirement of additional equipment will be generally restricted, of course, to places where present facilities have not been sufficient to provide adequate transportation for all pupils. It cannot therefore be regarded as, in any real sense, a problem arising from the elimination of segregation.

with the necessity of making substantial outlays for capital improvements.

Indeed, the financial cost of an "equalization" program for separate schools unquestionably would be far greater. No matter how small the Negro population in the particular area, it would have to be provided with facilities and equipment equivalent in all respects to those provided in white schools. In similar circumstances, a non-segregated school system may find that the educational needs of all children will be satisfied by merely closing down the former Negro school and transferring its pupils to other facilities.

While, placed in perspective, economic considerations would seem to furnish less of an obstacle to the maintenance of integrated schools than to "separate but equal" schools, it should be noted that if expenditures per classroom unit are to be continued at current levels for white children, an additional annual expenditure of over 160 million dollars will be required in the states involved and the District of Columbia. In respect to pupil transportation services, the estimated capital outlay is 40 million dollars. And the estimated cost of "equalizing" Negro schools is in excess of two billion dollars.[10]

4. In addition to problems of a purely administrative or fiscal character, school authorities

[10] These estimates have been furnished by the Office of Education, U. S. Department of Health, Education and Welfare.

may have to cope with a certain amount of popular hostility towards the elimination of segregation in public schools. This results from the fact that in each of the areas involved the dual system has existed for generations and is accepted by many as being a part of the "way of life" of the area. And the fear has been expressed in some quarters that the opposition to any departure from the existing pattern will manifest itself in the withdrawal of state aid to education and in other action on state and local levels designed to prevent or impair the effective operation of public schools on a nonsegregated basis.

We do not believe that there is warrant for presuming that responsible officials and citizens will tolerate violations of the Constitution.[11] The solutions to these problems, like all others in a democracy, will emerge from the "sober second

[11] The well-publicized student disturbances which occurred recently in some localities certainly provide no basis for such a presumption. For one thing, these disturbances were isolated; in the overwhelming majority of the areas which have begun or completed compliance with this Court's decision, the adjustment has been remarkably free of untoward incident. Moreover, it appears to be the fact that the misconduct was in substantial measure incited by a small number of reckless and irresponsible individuals and groups, many from without the community, who took full advantage of some students' immaturity. And, as is so often true in such circumstances, where school and law enforcement authorities made clear their determination neither to countenance nor to capitulate to lawlessness, the disturbances ended as abruptly as they had started.

thought of the community, which is the firm base on which all law must ultimately rest." (Stone, *The Common Law in the United States,* 50 Harv. L. Rev. 4, 25.) Popular hostility, where found to exist, is a problem that needs to be recognized and faced with understanding, but it can afford no legal justification for a failure to end school segregation. Racial segregation in public schools is unconstitutional and will have to be terminated as quickly as feasible, regardless of how much it may be favored by some people in the community. There can be no "local option" on that question, which has now been finally settled by the tribunal empowered under the Constitution to decide it.[12]

While general community hostility cannot serve as justification for avoiding or postponing compliance with the constitutional mandate, it is relevant in determining the most effective method for ending segregation in the particular

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[12] "That there exists a serious and difficult problem arising from a feeling of race hostility which the law is powerless to control, and to which it must give a measure of consideration, may be freely admitted. But its solution cannot be promoted by depriving citizens of their constitutional rights and privileges." *Buchanan* v. *Warley*, 245 U. S. 60, 80–81.

In any event, this would not be the proper occasion or time to adjudicate possible attempts to evade or circumvent this Court's decision. Such questions, like all other questions of constitutional law, must be resolved when they arise concretely, in a factual setting, and when this Court can have the benefit of findings of fact and the judgment of the lower courts.

locality. School administrators will have an obvious concern in obtaining public support and acceptance of the transition. The extent of the difficulties which may be encountered will depend, of course, upon the state of local opinion, which in turn is influenced by such varied factors as the economic structure, geographical location, and relative numbers of whites and Negroes in the community. There is, however, a general recognition of the need for thoughtful advance preparations to resolve the problems of desegregation with as few disruptions as possible. If any lesson can be derived from past experiences in ending segregated school systems, it is the importance of public confidence in the ability of school administrators to accomplish the adjustment without, in the process, losing sight of or sacrificing the basic and continuing educational needs of all the children affected.[13]

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[13] In presenting his program for integration for the approval of the Board of Education, the Superintendent of Schools of the District of Columbia laid emphasis on the consideration of the educational growth and welfare of the school child. Thus, in justification of the proposal that each presently enrolled pupil be granted a limited option to remain in the school he now attends even though he does not reside within its new attendance boundaries, the Superintendent enumerated the ways in which this would provide "stability, continuity and security in the educational experiences of pupils during the transition period." (See brief for respondents in No. 4, p. 13.)

While we do not describe the District of Columbia pro-

In some areas it may be found advisable to preface the desegregation process with programs, not extending for more than a few months, designed to promote interracial understanding among students, teachers, and parents. Such preparatory measures were taken in many of the localities which have abolished segregated school systems in recent years. In one New Jersey community, for example, funds were appropriated to allow several selected teachers to attend a special workshop on human relations conducted at a state university. In addition, an extension course on the same subject was offered by school authorities during the year preceding desegregation and was well attended by teachers. In other areas civic, P-TA, religious, and fraternal groups took the initiative in establishing a favorable climate for making the transition. It was found that the efforts of these groups were instrumental in reducing many of the pre-existing racial tensions in the community, with the result that

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gram in detail here, since this is undertaken in the brief for respondents in No. 4, we think it reflects credit upon those responsible for its formulation and execution. In every significant respect, the plan evidences painstaking care on the part of school officials to realize the expressed objective of an expeditious transition calculated "to make the best use of the total resources of the school system in plant and personnel, to serve the best interest of all the pupils, and to promote the general welfare of the community." (See brief for respondents in No. 4, p. 11.)

integration was accomplished speedily and with little or no serious friction or incident.[14]

V

THE FORMULATION AND EXECUTION OF PROGRAMS FOR TRANSITION TO NONSEGREGATED SCHOOL SYSTEMS SHOULD BE UNDERTAKEN BY THE RESPONSIBLE SCHOOL AUTHORITIES UNDER THE SUPERVISION OF THE COURTS OF FIRST INSTANCE

For the reasons which have been summarized, it is clear that no single formula or blueprint is readily susceptible of application to all localities which must end segregation in their school systems. The measures essential to bringing about an expeditious, orderly, and effective transition in any given area will depend on the special conditions and problems in that area. And since there is wide variance in local conditions, what may be practicable in one community may be wholly inappropriate in another.

A prerequisite to the formulation, initiation, and supervision of any practicable program for ending segregation is a knowledge of the special problems and needs of the particular community. It is the responsible school authorities and the courts of first instance in each area who will have the greatest familiarity with local conditions and

[14] The transitional experiences of twenty-four communities in six states which within the past ten years desegregated their public school systems are the subject of a study conducted under the auspices of the Fund for the Advancement of Education of the Ford Foundation. Williams and Ryan, *Schools in Transition* (1954).

who will be in the best position to evaluate their significance and effect in accomplishing desegregation in as short a period as feasible. For this reason, this Court should not, either itself or with the assistance of a special master appointed by it,[15] delineate the precise steps that each of the defendants should take in ending segregation in the public school systems. Instead, the primary responsibility for both devising and carrying out programs for the expeditious accomplishment of the required transition should be placed upon the defendants, to be exercised under the continuing direct supervision of the district courts or appropriate state courts.

This Court, we believe, should lay down standards for the guidance of the lower courts in carrying out its decision. A remand for further proceedings, without more, would add to the uncertainty and doubt which already exist and would only serve to make the process of adjustment more difficult.

Specifically, the lower courts should be instructed to require the defendants either to admit

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[15] While we do not believe that the Court should appoint a special master to hear evidence, there can be no question of its power to do so. In the 1948 revision of the Judicial Code, Congress expressly repealed R. S. 698 [28 U. S. C. (1946 ed.) 863] which had provided that "[u]pon the appeal of any cause in equity, * * * no new evidence shall be received in the Supreme Court." Act of June 25, 1948, c. 646, § 39, 62 Stat. 992. We find nothing to suggest that the legislative purpose was other than to remove the restriction entirely.

the plaintiffs, and other Negro children similarly situated, forthwith to public schools on a non-segregated basis or to propose promptly, for the court's consideration and approval, an effective program for accomplishing the transition as soon as practicable. In passing upon the acceptability of proposed programs, the criterion should be whether the defendants have sustained the burden of showing that their particular program will bring about the total elimination of racial considerations in the admission of pupils to public schools as rapidly as local conditions allow. And in determining whether the projected plan represents the most expeditious means of accomplishing an effective transition, the courts should be permitted to take into account the scope of the administrative adjustments that are called for and the particular conditions existing in the community. Where there are no solid obstacles to desegregation, delay is not justified and should not be permitted. It is only where the lower court finds, upon clear and convincing evidence, that the defendants have met the burden of showing that immediate (i. e., at the beginning of the next school term) completion of the desegregation program is impracticable, that any delay is justifiable. And, in such a situation, the district court should fix the shortest practicable period for completing desegregation.

Although it would be helpful if this Court could

specify outside limits for the period of desegregation, we do not think it would be feasible to do so at this time. Apart from the fact that there is no way of judging at this point what integration will involve in the particular area, maximum periods tend to become minimum periods. This Court should not enter any order which might have the practical effect of slowing down desegregation where it could be swiftly accomplished. The Court, however, should make it clear that any proposal for desegregation over an indefinite period will be unacceptable, and that there can be no justification anywhere for failure to make an immediate and substantial start toward desegregation, in a good-faith effort to end segregation as soon as feasible.

Further, the lower courts should be instructed to be insistent that any interval permitted for the accomplishment of desegregation is being fully utilized. Any period during which little or nothing is being done to further the transition would serve no useful purpose and, indeed, would only intensify the difficulties. Whether time will be useful will depend on how it is used; delay solely for the sake of delay is intolerable. Where a period of time is allowed for transition, it should be for the sole purpose of enabling necessary constructive measures to be taken, and not for the purpose of permitting postponement *per se*.

If the program for desegregation formulated by the defendants will remove, as expeditiously as possible, state-imposed or state-supported racial classifications of pupils in public schools, the lower courts should not substitute their judgment respecting the administrative features of the program for that of the school authorities. The Constitution prohibits the maintenance of segregaged school systems. It does not compel the adoption of any specific type of nonsegregated system. The decisive inquiry is whether race or color has been entirely eliminated as a criterion in the admission of pupils to public schools. The essence of the Court's decision in these cases is that there be no governmental action which enforces or supports school segregation.

This Court, we believe, should not in its present decrees give blanket approval to any particular programs for desegregation. The determination of the necessity for, and constitutionality of, any specific plan should not be made *in vacuo*. Flexibility in responding to developing circumstances may become important. The experience in carrying out a plan, once it is begun, may alter the assumptions on which it was based. For example, it may develop, after a plan is in operation, that it can be carried out more quickly than was anticipated at the outset, as has been demon-

strated by the experience in the District of Columbia.

VI

THE CASES SHOULD BE REMANDED TO THE LOWER COURTS WITH DIRECTIONS TO CARRY OUT THIS COURT'S DECISION AS RAPIDLY AS THE PARTICULAR CIRCUMSTANCES PERMIT

For the reasons outlined above, the Government suggests that the Court should enter decrees (a) declaring that racial segregation in public schools is unconstitutional and that all provisions of law requiring or permitting such segregation are invalid, and (b) remanding the cases to the appropriate courts of first instance for such further proceedings and orders as are necessary and proper to carry out this Court's decision.[16] The decrees should contain specific provisions substantially as follows:

(1) That the lower court shall forthwith enter orders directing the defendants to submit within 90 days a plan for ending, as soon as feasible, racial segregation of pupils in public schools subject to their authority or control.

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[16] In the Delaware case, No. 5, *Gebhart* v. *Belton*, the Attorney General of Delaware, in his brief for petitioners (pp. 17–18), now agrees that the judgment of the state Supreme Court should be affirmed. Accordingly, since the respondents did not file a cross-petition for certiorari, it would appear that in the Delaware case this Court should simply enter an order of affirmance.

(2) That, unless a satisfactory plan is submitted to and approved by the lower court, it shall forthwith enter appropriate orders, by way of injunction or otherwise, directing admission of the plaintiffs and other children similarly situated to nonsegregated public schools at the beginning of the next school term.

(3) That, upon submission of a plan by the defendants, the lower court shall promptly hold a hearing to determine whether it provides for transition to a nonsegregated school system as expeditiously as the circumstances permit. The defendants shall have the burden of proof on the question of whether, and how long, an interval of time in carrying out full desegregation is required. In approving any proposed program, the court shall make such modifications as may be required, and shall fix the earliest practicable date for completion of the program. And no program shall be sanctioned which does not call for the immediate commencement of the procedures necessary to the accomplishment of the transition.

(4) That during the period, if any, allowed for completion of the program for transition to a nonsegregated system, the lower court shall require the defendants to submit detailed periodic reports showing the progress made in ending segregation. The court shall enter such fur-

ther orders as may be required from time to time in order to insure against unnecessary delay in the execution of the program.

(5) That this Court shall retain jurisdiction for the purpose of making such further orders, if any, as may become necessary for carrying out its mandate. To this end the lower courts should be required to submit information reports to this Court at specified intervals showing in detail the actions taken in bringing about compliance with the requirements of the Constitution. (The Court may wish to appoint a special master to review such reports and to make appropriate recommendations thereon to this Court and to the lower courts.)

CONCLUSION

The responsibility for achieving compliance with the Court's decision in these cases does not rest on the judiciary alone. Every officer and agency of government, federal, state, and local, is likewise charged with the duty of enforcing the Constitution and the rights guaranteed under it. And, ultimately, it is the obligation of every citizen to respect and abide by the law, once it is authoritatively declared. We have no doubt that the American people and the officials through whom they act will meet these responsibilities

in the spirit, to quote the words of the President, of "patience without compromise of principle." [17]

Respectfully submitted.

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NOVEMBER 1954.

[17] New York Times, June 30, 1954, p. 19.

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Nos. 1, 2, 3, 4, 5

In the Supreme Court of the United States

OCTOBER TERM, 1954

No. 1

OLIVER BROWN, ET AL., APPELLANTS

v.

BOARD OF EDUCATION OF TOPEKA, ET AL.

No. 2

HARRY BRIGGS, JR., ET AL., APPELLANTS

v.

R. W. ELLIOTT, ET AL.

No. 3

DOROTHY E. DAVIS, ET AL., APPELLANTS

v.

COUNTY SCHOOL BOARD OF PRINCE EDWARD COUNTY, ET AL.

No. 4

SPOTTSWOOD THOMAS BOLLING, ET AL., PETITIONERS

v.

C. MELVIN SHARPE, ET AL.

No. 5

FRANCIS B. GEBHART, ET AL., PETITIONERS

v.

ETHEL LOUISE BELTON, ET AL.

SUPPLEMENTAL MEMORANDUM FOR THE UNITED STATES ON THE FURTHER ARGUMENT OF THE QUESTIONS OF RELIEF

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In the Supreme Court of the United States

OCTOBER TERM, 1954

No. 1 [1]

OLIVER BROWN, ET AL., APPELLANTS

v.

BOARD OF EDUCATION OF TOPEKA, SHAWNEE COUNTY, KANSAS, ET AL.

SUPPLEMENTAL MEMORANDUM FOR THE UNITED STATES ON THE FURTHER ARGUMENT OF THE QUESTIONS OF RELIEF

Pursuant to the Court's request at the oral argument, the Government submits this supplemental memorandum dealing with the "class action" character of the suits at bar.

I

The instant suits are class actions under Rule 23(a)(3) of the Federal Rules of Civil Procedure [2]

We note at the outset that the plaintiffs instituted their suits in the district courts, not only on their

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[1] Together with No. 2, *Harry Briggs, Jr., et al.* v. *R. W. Elliott, et al.*; No. 3, *Dorothy E. Davis, et al.* v. *County School Board of Prince Edward County, et al.*; No. 4, *Spottswood Thomas Bolling, et al.* v. *C. Melvin Sharpe, et al.*; and No. 5, *Francis B. Gebhart, et al.* v. *Ethel Louise Belton, et al.*

[2] No. 5, which arose in the state courts, was brought, of course, pursuant to Delaware procedure.

own behalf, but also on behalf of persons similarly situated;[3] that the suits were treated as class actions in the various courts below;[4] and that they were described as such in this Court's opinion of last term, 347 U. S. at 495. This treatment, in our view, was correct.

The authority to institute a class action is conferred by Rule 23(a) in the following terms:

> If persons constituting a class are so numerous as to make it impracticable to bring them all before the court, such of them, one or more, as will fairly insure the adequate representation of all may, on behalf of all, sue or be sued, when the character of the right sought to be enforced for or against the class is
>
> (1) joint, or common, or secondary in the sense that the owner of a primary right refuses to enforce that right and a member of the class thereby becomes entitled to enforce it;
>
> (2) several, and the object of the action is the adjudication of claims which do or may affect specific property involved in the action; or
>
> (3) several, and there is a common question of law or fact affecting the several rights and a common relief is sought.

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[3] See No. 1, R. 4, 7; No. 2, R. 5, 10-11; No. 3, R. 6, 9-10, 23.

[4] This is evident from the findings, opinions, and lower-court decrees. See No. 1, R. 244; No. 2, R. 190, 210; No. 3, R. 617-618, 624.

Subdivision (1) deals with a type of class action traditional under equity practice—the situation where the members of the class have a joint or common interest predicated upon a jural relation between or among them.[5] A familiar example is a suit by representatives of an unincorporated association. Subdivision (2) has to do with individual plaintiffs and a claim to a common fund or *res*. Subdivision (3), which is here pertinent, relates to the situation in which each member of the class has an individual or personal right, in no way dependent for its assertion upon the joinder of other members of the class, in which a class action is permitted on the ground that "there is a common question of law or fact affecting the several rights and a common relief is sought." Its purpose is to provide a device, in appropriate circumstances, for the avoidance of multiplicity of actions.

It would appear that the conditions for a class suit under subdivision (3) are satisfied here. There is no dispute that the members of the class are numerous. There is no suggestion that the individual plaintiffs fail to represent the interests of all. It is plain that the rights are several and simi-

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[5] This is not to suggest that multi-party litigation involving persons having rights or duties which are *several* in character is strictly a recent development. The Chancellor not infrequently exercised his powers when the nature of the interest involved was neither joint nor common but the issue was one presenting a common question of law or fact. As to the avoidance of multiplicity of actions as a ground of equity jurisdiction, see, generally, Pomeroy, *Equity Jurisprudence*, Sec. 243 *et seq.* (5th ed.); *Chafee, Bills of Peace with Multiple Parties*, 45 Harv. L. Rev. 1297.

lar; each member of the class has a constitutional right not to be segregated in public school because of his race or color. These individual rights have already been adjudicated upon the basis of common questions of law and fact. And, in each case, declaratory and injunctive relief was requested for the benefit of all of the members of the class, and not merely on behalf of the named plaintiffs.

Thus, almost without exception, the lower federal courts have entertained class suits instituted on behalf of persons adversely affected by racial discrimination. As stated in *Kansas City, Mo.* v. *Williams,* 205 F. 2d 47, 52 (C. A. 8), certiorari denied, 346 U. S. 826 (representative suit by three Negroes challenging discrimination in the operation of a public recreational facility):

> Violations of the Fourteenth Amendment are of course violations of individual or personal rights, but where they are committed on a class basis or as a group policy, such as a discrimination generally because of race, they are no less entitled to be made the subject of class actions and class adjudication under rule 23, Federal Rules of Civil Procedure, 28 U. S. C. A., than are other several rights. And the District Courts, where the question has so arisen, have practically unanimously so recognized. See, e. g., Gonzales v. Sheely, D. C. Ariz., 96 F. Supp. 1004; Wilson v. Board of Sup'rs of La. State University, etc., D. C. La., 92 F. Supp. 986; Johnson v. Board of Trustees

of University of Kentucky, D. C., E. D. Ky., 83 F. Supp. 707; Davis v. Cook, D. C., N. D. Ga., 80 F. Supp. 443; Lopez v. Seccombe, D. C., S. D. Cal., 71 F. Supp. 769—to give but a few examples. See also Alston v. School Board of City of Norfolk, 4 Cir., 112 F. 2d 902, 997, 130 A. L. R. 1506; City of Birmingham v. Monk, 5 Cir., 185 F. 2d 859.[6]

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[6] For other instances of representative suits challenging segregation, see *Carter* v. *School Board*, 182 F. 2d 531 (C.A. 4); *Mendez* v. *Westminster School District*, 64 F. Supp. 544 (S.D. Cal.), affirmed, 161 F. 2d 774 (C.A. 9); *Draper* v. *City of St. Louis*, 92 F. Supp. 546 (E.D. Mo.), appeal dismissed, 186 F. 2d 307 (C.A. 8); *Thomas* v. *Hibbitts*, 46 F. Supp. 368 (M.D. Tenn.); *Wilson* v. *City of Paducah*, 100 F. Supp. 116 (W.D. Ky.). Cf. *System Federation No. 91* v. *Reed*, 180 F. 2d 991 (C.A. 6) (class action by non-union employees of a carrier to enjoin discrimination against their rights to acquire seniority, in violation of Railway Labor Act).

Of course, a case involving discrimination is but one of many factual situations in which Rule 23(a)(3) may provide an appropriate means of dealing in a single action with individual claims of right asserted by a large number of persons similarly situated. See, *e.g.*, *Weeks* v. *Bareco Oil Co.*, 125 F. 2d 84 (C.A. 7) (representative suit by two of 900 gasoline jobbers against oil companies, charging antitrust violations); *National Hairdressers' and Cosmetologists' Assn.* v. *Philad Co.*, 41 F. Supp. 701 (D. Del.), affirmed, 129 F. 2d 1020 (C.A. 3) (representative suit seeking declaration that process used by several thousand members of a national hairdressers' association does not infringe defendant's patent and an injunction against infringement suits by defendant); *Gramling* v. *Maxwell*, 52 F. 2d 256 (W.D. N.C.) (representative suit by single taxpayer on behalf of himself and several hundred similarly situated to enjoin State Commissioner of Revenue from collecting unlawful tax). Another example familiar to the Court is provided by representative suits asserting rights under the Selective Training and Service Act of 1940. See *Trailmobile Co.* v. *Whirls*, 331 U.S. 40.

II

The decrees may extend to persons in the respective classes who have not individually appeared in the proceedings

To state that a suit meets the requirements of a class action under Rule 23 does not in and of itself necessarily determine whether relief should in terms extend to all members of the class or should be limited to those who individually identify themselves with the proceeding, either as original or intervening complainants.[7] Thus, Professor Moore takes the position that, when the suit is under subdivision (3) of the rule (*i. e.*, when the rights are several in nature), the action is "an invitation to joinder," rather than a "command performance," and that the "decree . . . binds only those actually before the court." 3 Moore, *Federal Practice*, 3443, 3465 (2d ed.). Other commentators are of the view that this unduly restricts the function of the class action; that, so interpreted, subdivision (3), which offers the greatest promise of facilitating disposition of important questions involving a substantial number of parties, accomplishes little more than the rules as to permissive joinder and intervention (Rules 20, 24(b)); and that, in appropriate cases, relief may go beyond the parties actually before the court. Kalven and Rosenfield, *The Contemporary Function of the Class Suit*, 8 U. of Chi. L. Rev. 684, 701 *et seq.*; *Federal Class Actions: A Suggested Revision of Rule 23*, 46 Col. L.

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[7] We deal under Point III with the question of timely intervention.

Rev. 818. The *Restatement, Judgments*, Section 86, declares:

> A person who is one of a class of persons on whose account action is properly brought or defended in a representative action or defense is bound by and entitled to the benefits of the rules of res judicata with reference to the subject matter of the action.
>
> Comment *a* . . . [This] rule . . . applies where an action is brought by one . . . whose interests are similar to those of a large number of others, so that it is proper and convenient for him to speak on behalf of all. . . .

This Court has not passed directly upon the point, though it may be noted that the discussion in *Hansberry* v. *Lee*, 311 U. S. 32, addressed to the question whether a state court judgment may be binding upon absent members of a class, emphasizes the requirement of adequate representation but suggests no narrow strictures upon the method of defining the class.[8] The requirement made by the

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[8] "*It is familiar doctrine of the federal courts that members of a class not present as parties to the litigation may be bound by the judgment where they are* not *in fact adequately represented by parties who are present, or where they actually participate in the conduct of the litigation in which members of the class are present as parties . . . or where the interest of the members of the class, some of whom are present as parties, is joint, or where for any other reason the relationship between the parties present and those who are absent is such as legally to entitle the former to stand in judgment for the latter.*" [311 U.S. at 42-43.]

Restatement that the action be "properly" brought or defended would appear to embrace the due process requirements of fair notice and adequate representation emphasized in *Hansberry*. It is significant that one of the effects of the rule enunciated in the *Restatement* would be to hold absent members of a class, who were properly represented, bound by an unfavorable result. The problem here—whether the benefits of a decree should be extended to absent members of a plaintiff class—is certainly of a lesser order, since there can be no question that the defendants had their full day in court. ". . . there is by no means complete symmetry between binding the defendant to a favorable decree and binding the absentee to an unfavorable decree. Clearly, the defendant has been afforded his day in court; he has had the opportunity to present his case fully in his own right, and he has lost. He has no more reason to relitigate the entire controversy against the absentee members than he has to do so against the immediate plaintiff." Kalven and Rosenfield, *op. cit.*, at 713.

A considerable number of cases in the lower federal courts follow Professor Moore's view and hold that in a class action based upon the existence of a common question, relief will be limited to those who come before the court. Perhaps, the leading cases in this category are *Oppenheimer* v. *F. J. Young & Co.*, 144 F. 2d 387 (C. A. 2) (class action by bondholders for damages), and *Pentland* v. *Dravo Corp.*, 152 F. 2d 851 (C. A. 3), (representative suit to obtain overtime compensation under

Fair Labor Standards Act [9]). Generally, the cases which hold that judgment will bind only the parties before the court have been actions for damages. The consideration that damages will vary from plaintiff to plaintiff has apparently been a practical consideration in inducing the holding that the effect of the decision will be confined to those who come into the proceeding. See *Oppenheimer* at 390; *Pentland* at 855.[10] In the situation presented by the *Pentland* case, the court was concerned, moreover, with the fact that separate defenses might be available as against some members of the plaintiff class.[11]

In "common question" cases in which relief of an equitable nature is sought, the courts have manifested a greater disposition to extend the benefits of the decree to absent members of a successful plaintiff class. *Gramling* v. *Maxwell*, 52 F. 2d 256 (W. D. N. C.), to which Mr. Justice Harlan referred at the oral argument, is an apt illustration.

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[9] As the opinion in *Penland* shows, there have been numerous "common question" class suits under the Fair Labor Standards Act.

[10] Cf. *McGrath* v. *Tadayasu Abo*, 186 F. 2d 766 (C. A. 9), certiorari denied, 342 U. S. 832, in which determination of particular circumstances affecting each plaintiff was required.

[11] Thus, the court observed (p. 853):

> But because an employer fails to obey the law as to employee A, it does not follow that he has not obeyed it as employees B, C or D. B may not be engaged in interstate commerce or the production of goods for commerce, while A may. Employee C may be a salaried worker or a supervisor who does not come under the Act. Employee D may have been paid the statutory minimum and not have worked any overtime at all.

That suit was brought before a three-judge district court to restrain the North Carolina Commissioner of Revenue from collecting a tax on peddlers of fruits and vegetables. The ground of challenge was that the tax, which was not applicable to those purveying fruits and vegetables grown in North Carolina, was a burden on interstate commerce. The complainant, who owned 100 trucks, each of which would have been subject to a $50 license tax, sought an injunction on his own behalf and others similarly situated. Holding that the tax was unconstitutional, the court concluded that the injunction against attempted collection should run in favor of all members of the class, irrespective of the fact that some of its members would not have had standing (because of the absence of the requisite jurisdictional amount) to sue individually in the federal courts (pp. 260-263). In reaching this conclusion, the court emphasized the function of equity in avoiding an unnecessary multiplicity of litigation.[12]

employees to enjoin discrimination against the

In *System Federation No. 91* v. *Reed*, 180 F. 2d 991 (C. A. 6), a representative suit by railroad

[12] In this connection, the opinion refers to Pomeroy's treatise. See note 5, *supra*. In his discussion of representative suits by taxpayers whose "only community . . . is in the questions at issue to be decided," Pomeroy declares that the decisions of many able courts have "demonstrated the fact that complete and final relief may be given to an entire community by means of one judicial decree, which would otherwise require an indefinite amount of separate litigation by individuals, even if it were attainable by any means." Pomeroy, *op cit*, pp. 529-537.

acquisition of seniority rights by non-union employees, the decree forbade discrimination "against the plaintiffs and the classes represented by them" (p. 993). Subsequent to entry of the decree, a member of the class who was not a named plaintiff was permitted to come into the case and to apply for a citation of contempt (p. 998).

The same approach is reflected in numerous suits for injunctive relief challenging racial discrimination.

Mendez v. *Westminster School District*, 64 F. Supp. 544 (S. D. Cal.), affirmed, 161 F. 2d 774 (C. A. 9), was a class action against public school authorities to compel the admission of five named plaintiffs and some 5000 other Mexican children similarly situated. The court determined that the plaintiffs were entitled to injunctive relief restraining further discriminatory practices against "pupils of Mexican descent in the public schools of defendant school districts" (p. 551).

Draper v. *City of St. Louis*, 92 F. Supp. 546. (E. D. Mo.), appeal dismissed, 186 F. 2d 307 (C. A. 8), was a class action to compel admission of Negroes to a swiming pool maintained by the city. The court entered a decree prohibiting the defendant from denying admission to the named plaintiff and others of the Negro race.

Gonzales v. *Sheely*, 96 F. Supp. 1004 (D. Ariz.), was a class action to enjoin the segregation of students of Latin or Mexican descent within a school district. The court indicated that an injunction to this effect should issue.

Davis v. *Cook*, 80 F. Supp. 443 (N. D. Ga.), reversed on other grounds, 178 F. 2d 595 (C. A. 5), certiorari denied, 340 U. S. 811, was a class action brought by a Negro teacher on behalf of himself and all other Negro teachers and principals similarly situated to require the defendants to cease discriminating against Negro principals and teachers in respect to salaries. The district court determined that the named plaintiff was entitled to the relief sought for himself and for the "principals and teachers he represents." *Thomas* v. *Hibbitts*, 46 F. Supp. 368 (N. D. Tenn.), is to the same effect.

Wilson v. *City of Paducah*, 100 F. Supp. 116 (W. D. Ky.), was a representative suit brought to compel the admission of Negroes to a municipal junior college. The district court entered summary judgment on the motion of the named plaintiffs. Some ten months thereafter, two individuals who were not named in the original action moved to intervene, alleging that they had been denied admission to the college solely by reason of their race. The city contended that the original complaint did not establish the suit as a class action and that the judgment had not conferred rights upon individuals other than the named plaintiffs. It further contended that the motion to intervene was not timely. The court rejected both contentions, holding (1) that the question as to the class nature of the action had been disposed of on the motion for summary judgment and was *res judicata*, and (2) that the applicants, being members of the class,

were entitled to intervene in order to secure to themselves the benefits afforded by the decree.

In light of the preceding discussion, we believe that there is no legal barrier to extending the relief in the instant cases to persons "similarly situated." As earlier noted, the defendants have had full opportunity to litigate the issues. The rights of the unnamed members of the classes do not differ in character from those of the named plaintiffs. There is no question of separate defenses. It appears, moreover, that to give truly effective relief to the few will actually require effective relief for the many. We conclude that the power of equity is sufficient to avoid the multiplicity of litigation which would doubtless follow from a decree limited to a relatively few plaintiffs, and that this Court may, and should, fashion decrees protecting the constitutional rights of children similarly situated.

III

In any event, members of the class who have not yet intervened are still eligible to do so

"Upon timely application anyone may be permitted to intervene in an action . . . (2) when an applicant's claim or defense and the main action have a question of law or fact in common" (Federal Rules of Civil Procedure, Rule 24(b)). The timeliness of an application is a matter for the discretion of the court. "In exercising its discretion the court shall consider whether the intervention

will unduly delay or prejudice the adjudication of the rights of the original parties" (*ibid.*).[13]

Consistently with this rule, the district courts might entertain applications for intervention in the instant cases. Such applications, if made, would not delay or prejudice adjudication of the rights of the original parties; presumably, they would be made only to secure to unnamed members of the described classes the benefits of the relief ultimately decreed. If this Court should conclude that the decrees entered in these cases are to run only to named parties, it becomes particularly important that a liberal policy be adopted in permitting intervention by other members of the class, many of whom have undoubtedly assumed that the decrees would not be so restricted. Compare the liberal intervention policy followed in *Pentland* v. *Dravo Corp., supra,* 152 F. 2d at 856, and *McGrath* v. *Tadayasu Abo, supra,* 186 F. 2d at 769-770, and suggested in *Guaranty Trust* v. *York,* 143 F. 2d 503, 529, reversed on other grounds, 326 U. S. 99. And see Kalven and Rosenfield, *op. cit.*, 8 U. of Chi. L. Rev. at 695 (". . . the basic function of the class suit is achieved only if the decree is held open to permit the absentee members of the class to come under the decree after the decision . . ."). This Court might insure the adoption of such a policy by an appropriate direction to the district courts.

If the Court should conclude that the decrees

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[13] Rule 23, relating to class actions, is silent on the question of timeliness of intervention.

should run to all members of the described classe we presume that any member of a class would be entitled to vindicate his rights under the decree and to seek such ancillary orders as might prove necessary for that purpose. See *System Federation No. 91* v. *Reed* and *Wilson* v. *City of Paducah*, discussed *supra*.

Respectfully submitted,

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APRIL, 1955.

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Supreme Court of the United States

OCTOBER TERM, 1954

No. 2

HARRY BRIGGS, JR., ET AL., APPELLANTS,

versus

R. W. ELLIOTT, CHAIRMAN, J. D. CARSON, ET AL., MEMBERS OF BOARD OF TRUSTEES OF SCHOOL DISTRICT NO. 22, CLARENDON COUNTY, S. C., ET AL., APPELLEES.

BRIEF FOR APPELLEES ON REARGUMENT ON QUESTIONS 4 AND 5

ROBERT McFIGG, JR.,
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Counsel for Appellees.

November 15, 1954.

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STATEMENT

The instant action was brought to enjoin the enforcement of provisions in the Constitution and statutes of the State of South Carolina which require separate schools for the white and colored races. The principal defendants were the school trustees of School District No. 22 of Clarendon County. (R. 2.)

The District Court of three judges (one judge dissenting) upheld the validity of the State's constitutional and statutory provisions under challenge, but found inequality in the school facilities furnished the two classes of school

children, and exercised its discretion to permit the school authorities to equalize such facilities. (R. 176 *et seq.*; 301 *et seq.*)

Under the South Carolina educational legislation of 1951, School District No. 22 was consolidated with a number of other school districts in Clarendon County into new School District No. 1, the school trustees of which were made parties to this action (R. 305, 306). By means of State aid for capital construction obtained by the new school district under the 1951 legislation, the school trustees have brought about equality of physical facilities and all other "tangible" factors.

In this Court's opinion filed May 17, 1954, it was held that, despite such equality, segregation in public education is a denial of the equal protection of the laws. Reargument was ordered on Questions 4 and 5 previously propounded by the Court, which questions relate to the formulation of the decrees to be entered by the Court in the five cases heard together.

The appellees discussed these questions in their brief on re-argument filed prior to the December, 1953, hearing (pp. 80-89), and reiterate the position there taken, that the only proper disposition of the appeal in the instant action is to remand the action to the court of first instance for further proceedings in conformity with the opinion of May 17, 1954. The District Court in the exercise of its equity powers, may then enter such decree as it may determine, under the evidence received by it upon further inquiry and under the principles which apply to the granting of equitable relief, to be proper.

ARGUMENT

In ordering re-argument on the question of relief, the Court stated that problems of considerable complexity are presented in the formulation of the decrees because the cases are class actions, because the wide applicability of the decision, and "because of the great variety of local conditions."

While the complaint (R. 5) alleges that the action was brought by the appellants as plaintiffs "in their own behalf and in behalf of all other Negro children attending the public schools in the State of South Carolina" (R. 5), the only appellees who have the function of actually providing, maintaining and operating public schools are the school trustees and superintendent of the district, whose jurisdiction is limited to the schools of School District No. 1. The functions of the other appellees are merely supervisory or appellate, and none of them have any jurisdiction or authority outside of Clarendon County.

It is apparent, therefore, that, while the decision itself will have effect as *stare decisis* in many States and school districts, the decree entered in the instant action will as a practical matter be effective only in School District No. 1, and is little, if any, affected by the fact that the action is a class action.

It is quite clear from the record, however, that the situation in School District No. 1 represents one extreme of "the great variety of local conditions" falling under the Court's decision. The district is in a predominantly rural and agricultural section, sparsely settled. Less than 10% of its school population is white (R. 265). Both its white and Negro schools are centralized, with reliance to an unusual degree upon school bus transportation (presently operated on a dual system basis). The problem in this district is not the assignment of a comparatively small num-

ber of Negro pupils to white schools. Here integration would involve the assignment of white pupils, in the proportion of less than one out of ten, to what are in reality Negro schools, and the transportation of many of such white pupils in what are essentially Negro school buses, all in abrupt and violent departure from and rupture of the pattern of community ways and habits of nearly a century. There is evidence in the record as to the difficulty to be expected in relation to public acceptance of desegregation in the schools of the district (R. 113, 114).

It is impossible to conceive of a problem arising under the Court's decision which is more difficult than that facing the school authorities in a district such as the one involved in the instant action, or a situation which is more in need of inquiry by the Court with a view of seeing that the public interest in the continuance of efficient public school education in the district as well as the private rights of the appellants are both duly considered in the framing of the final decree in the act' n.

As to Question 4—The Equity Powers of the Court.

In Question 4 the Court asked whether a decree necessarily follows (under the decision rendered) that, within the limits set by normal geographic school districting, Negro children should forthwith be admitted to "schools of their choice," or whether the Court, in the exercise of its equity powers, may permit an effective gradual adjustment to be brought about from existing segregated systems to a system not based on color distinctions.

The appellees in their brief filed on re-argument in December, 1953 (pp. 80-82) took the position that under the equity powers vested in this Court (and in the lower federal courts as well) power is not lacking to permit such effective gradual adjustments, especially since the public

interest is so vitally involved. The public interest is a significant factor to be weighed by courts of equity in the granting or withholding of relief, *Virginia Ry. v. System Federation No. 40*, 300 U. S. 515, 552 (1937); *United States v. Morgan*, 307 U. S. 183, 194 (1939), and plaintiffs have on occasions been denied equitable relief altogether and remitted to less effectual remedies at law where the public interest might have been adversely affected, *Harrisonville v. W. S. Dickey Clay Mfg. Co.*, 289 U. S. 334 (1933); *Beasley v. Texas & Pacific Ry.*, 191 U. S. 492 (1903).

Indeed, the existence of the power of the Court referred to in Question 4(b) does not appear to be doubted by any interested party to the cases under consideration, and both Attorney General McGranery and Attorney General Brownell, in the briefs which they have heretofore filed in these cases, have strongly asserted and supported with argument and authority both the Court's power and the importance of its use in proper cases in whatever decrees are framed under the Court's decision, whether by this Court or by the District Courts.

In Attorney General McGranery's brief filed for the United States as *amicus curiae* prior to the December, 1952, hearing, and prior to the propounding by the Court of Questions 4 and 5, it was stated (p. 27):

> "It is fundamental that a court of equity has full power to fashion a remedy to meet the needs of the particular situation before it (citing cases). **The fact that a system or practice is determined to be unlawful does not of itself require the court to order that it be abandoned forthwith.**" (Emphasis added.)

It was further stated (pp. 28-29):

> "If, in any of the present cases, the Court should hold that to compel colored children to attend 'separate but equal' public schools is unconstitutional, the Government would suggest that in shaping the relief the Court should take into account the need, not only for

prompt vindication of the constitutional rights violated, but also for orderly and reasonable solution of the vexing problems which may arise in eliminating such segregation. **The public interest plainly would be served by avoidance of needless dislocation and confusion in the administration of the school systems affected.** It must be recognized that racial segregation in public schools has been in effect in many states for a long time. Its roots go deep in the history and traditions of these states. **The practical difficulties which may be met in making progressive adjustment to a non-segregated system cannot be ignored or minimized.**

"A decision that the Constitution forbids the maintenance of 'separate but equal' public schools will necessarily result in invalidation of provisions of constitutions, statutes, and administrative regulations in many states—provisions which were adopted in good faith upon the assumption, supported by previous declarations of this Court, that they were consistent with the requirements of the Fourteenth Amendment." (Emphasis added.)

Attorney General McGranery envisioned procedure that would "afford opportunity to responsible school authorities to develop a program most suited to their own conditions and needs" (p. 30), and it was suggested that "to the extent that there may exist popular opposition in some sections to abolition of racially-segregated school systems * * * a program for orderly and progressive transition would tend to lessen such antagonism." (p. 30.)

In Attorney General Brownell's brief filed prior to the December, 1953, hearing, Question 4 is discussed at length. The following indicate the Attorney General's conclusions as to the equity powers of the Court relevant here:

"The shaping of relief in the present cases involves reference to three fundamental principles governing the granting of judicial remedies, each of which is to some degree applicable here: (1) One whose legal

rights have been and continue to be violated is entitled to relief which will be effective to redress the wrong. If a court finds that certain conduct is unlawful, it normally enters a decree enjoining the continuation of such conduct. (2) A court of equity is not inflexibly bound to direct any particular form of relief. It has full power to fashion a remedy which will best serve the ends of justice in the particular circumstances. (3) In framing its judgment a court must take into account not only the rights of the parties but the public interest as well. The needs of the public, and the effect of proposed decrees on the general welfare, are always of relevant, if not paramount, concern to a court of justice." (pp. 153-154.)

"* * * [W]hatever the difficulties of determining what remedy would be most effective and fair in redressing the violation of constitutional right presented in these cases, we believe there can be no doubt of the Court's power to grant such remedy as it finds to be most consonant with the interests of justice." (p. 154.)

"Congress has expressly empowered the Court, in dealing with cases coming before it, to enter such appropriate judgment, decree, or order, or require such further proceedings to be had as may be just under the circumstances. 28 U. S. C. 2106. The breadth of this power, and the flexibility of judicial remedies which it permits the Court to utilize, have been demonstrated in a great variety of situations (citing cases). * * * Where public interests are involved, equitable powers 'assume an even broader and more flexible character than when only a private controversy is at stake.'" pp. 154-156.)

"The Court has expressed a reluctance to enter decrees which would involve the judiciary in the administration of complex and detailed matters: "The judiciary is unsuited to affairs of business management; and control through the power of contempt is crude and clumsy and lacking in the flexibility necessary to make continuous and detailed supervision effective" (citing cases). The choice whether or not the

courts are to be thrust into a system involving difficult policing problems 'should not be faced unless the need for the system is great and the benefits plain.' " (p. 163.)

The Attorney General also considered and refuted the argument that the "personal and present" character of the right asserted by the appellants limits or makes inoperative the power of the Court to exercise its discretion and take the public interest into account in relation to the equitable relief which it may grant. He stated:

"It may be contended, however, that the powers of a court of equity are not so comprehensive where vindication of the constitutional right to equal protection of the laws is involved. Such right, the Court has pointedly observed, is personal and present (citing cases). * * * [T]he constitutional issues presented to the Court transcend the particular cases and complainants at bar, and in shaping its decrees the Court may take into account such public considerations as the administrative obstacles involved in making a general transition throughout the country from existing segregated school systems to ones not based on color distinctions. If the Court should hold in these cases that racial segregation *per se* violates the Constitution, the immediate consequence would be to invalidate the laws of many states which have been based on the contrary assumption. Racial segregation in public schools is not an isolated phenomenon limited to the areas involved in the cases at bar, and it would be reasonable and in accord with its historic practices for the Court in fashioning the relief in these cases to consider the broad implications and consequences of its ruling.

"The 'personal and present' language appears in cases involving education on the professional and graduate levels. Each case involved a single plaintiff. It is one thing to direct immediate relief where a single individual seeks vindication of his constitutional rghts in the relatively narrow area of professional and grad-

uate school education, and an entirely different matter to follow the same course in the broad area of public school education affecting thousands of children, teachers, and schools. **We do not think that when the Court in those cases characterized the right to equal protection of the laws as 'personal and present', it was thereby rejecting the applicability, to cases involving the right, of settled principles governing equitable relief.** (Emphasis added.) On the contrary, the Court has recognized that such principles are equally applicable to litigation involving fundamental constitutional rights of individuals." (pp. 164-167.)

"* * * [T]he Court has undoubted power in these cases to enter such decrees as it determines will be most effective and just in relation to the interests, private and public, affected by its decision." (p. 167.)

The appellants, in their brief on re-argument filed prior to the December, 1953, hearing, conceded "that, as a court of chancery, this Court has power in a proper case to mold its relief to individual circumstances" (p. 191), but contended that the "personal and present" nature of the appellants' respective rights made such power inapplicable in these cases, a contention conclusively answered in Attorney General Brownell's brief, as has been shown.

The appellees respectfully submit that this Court, in the exercise of its equity powers, may permit effective gradual adjustments to be brought about from existing segregated systems to systems not based on color distinctions, and that the equitable discretion of this Court (and of the lower federal courts) should be exercised in a situation such as that presented here in such manner, after due inquiry into all relevant factors, as may best subserve the public interest as well as the private interests involved.

As to question 5—Should this Court Formulate the Decrees?

Question 5, predicated upon the assumption that the Court will exercise its equity powers in the manner contemplated in Question 4(b), asked whether this Court should formulate detailed decrees in the cases itself, or should remand them to the courts of first instance with directions to frame the decrees.

As to the first alternative, the Court asked what specific issues the decrees should reach, and whether the Court should appoint a special master to hear evidence and recommend specific terms of such decrees.

As to the second alternative, the Court asked what general directions to the courts of first instance should be included in its remand, and also what procedures the courts of first instance should follow in arriving at the specific terms of more detailed decrees.

The appellees in their brief filed on re-argument prior to the December, 1953, hearing (pp. 83-89) took the position that this Court should not, and indeed could not, formulate a detailed decree in this case; that this Court should not appoint a special master to hear evidence with a view of recommending specific terms for such a decree; and that this Court should remand the case to the District Court for further proceedings in conformity with the Court's opinion.

Attorney General McGranery, in his brief above referred to, considered the district court to be an appropriate tribunal to "fashion particular orders to meet particular needs" (p. 30), and "assumed that the district courts are, because of their familiarity with local conditions, the appropriate tribunals to deal with issues of relief" (p. 31, n. 18). In the same footnote (seemingly as an afterthought) it was observed that the Court may wish to formulate more precise standards and provisions for the guidance of the

district courts, in which event, among other things, the suggestion was made that a special master might be appointed to hold hearings and make recommendations to the Court on that question.

In discussing Question 5, Attorney General Brownell referred briefly to "some of the kinds of administrative problems which may arise in giving effect to a holding that separate school systems are unconstitutional." These included: (a) that such a decision "will necessarily result in invalidation of provisions of constitutions, statutes, and administrative regulations in many states"; (b) that in many areas existing boundaries of school districts may require extensive revision; (c) that school authorities may wish to give pupils a choice of attending one of several schools, a choice now prohibited; (d) that schools may have to be consolidated, teachers and pupils transferred, teaching schedules revised, and transportation arrangements altered; and (e) that in some jurisdictions (including South Carolina) changes in the law (as for instance on the allocation of public school funds) may be required.

He expressed the view that (p. 171):

> "The extent of the administrative and legal changes required will thus vary in the different jurisdictions involved, depending on these and other factors which now cannot be evaluated or measured. Accordingly, **it is impossible to determine at this time what specific period of time would be required to overcome the administrative obstacles to school integration in any particular area.**" (Emphasis added.)

Attorney General Brownell referred in some detail to New Jersey as an example of recent experience in desegregation under a state constitutional amendment. He stated (pp. 175-176):

> "Following the adoption in 1947 of a state constitution expressly forbidding racial segregation in the

public schools of the state, a program for elimination of segregated schools was put into operation. **A survey disclosed that there were 43 school districts in New Jersey which had one or more separate Negro schools.** These were located in urban areas, agricultural townships, and in some relatively well-to-do suburban communities. **Practically all the school officials and a majority of the school board members concerned did not oppose the program of racial integration of pupils.**

"Since many of the communities involved had individual problems, no single formula could be applied."

And further (p. 178):

"**By September 1951, 40 of the 43 school districts involved in the New Jersey program were completely integrated and the remaining three districts had taken substantial steps towards integration.** The state official in charge of the program summarized the New Jersey experience as follows: '**While New Jersey cannot furnish any one formula,** it can testify that complete integration in the public schools can and will work. It may even be safe to say once more, that the way to learn to do a thing is to do it, and in this respect, New Jersey has proven again that the best way to integrate is to do it.'" (Emphasis added.)

After detailed consideration of the situation which would arise in the event of a decision holding separate school systems to be unconstitutional, Attorney General Brownell stated (p. 183):

"Administrative and other obstacles will have to be overcome in order to accomplish complete transition to nonsegregated systems. **The nature and extent of such problems will vary throughout the country, and the time required to eliminating school segregation in any particular community will depend on numerous factors which neither this Court nor counsel can now evaluate.**" (Emphasis added.)

And further (p. 184):

> **"There is no single formula or blueprint which can be uniformly applied in all areas where existing school segregation must be ended. Local conditions vary, and what would be effective and practicable in the District of Columbia, for example, could be inappropriate in Clarendon County, South Carolina. Only a pragmatic approach based on a knowledge of local conditions and problems can determine what is best in a particular place. For this reason, the court of first instance in such area should be charged with the responsibility for supervision of a program for carrying out the Court's decision. This Court should not, either itself or through appointment of a special master, undertake to formulate specific and detailed programs of implementation adapted to the special needs of particular cases."** (Emphasis added.)

Stating that the local school authorities should have the burden of presenting and establishing the local considerations to the District Court, he observed (p. 185):

> "As the responsible authorities in charge of the public schools, they would be in the best position to develop a program most suited to local conditions and needs, and to indicate the length of time required to put it into effect. In passing upon such a program, the lower court could receive the views not only of the parties but of interested persons and groups in the community. Such a locally-developed program for orderly and progressive transition to nonsegregation would tend to encounter less resistance and be thus more likely to achieve success."

Attorney General Brownell suggested a form of remand adapted from that employed by this Court in *United States v. American Tobacco Co.*, 221 U. S. 106, but the appellees respectfully submit that remand of the instant action to the lower court for further proceedings in conformity with the Court's opinion (as is done in the ordi-

nary lawsuit) will serve every purpose of the suggested decree, and will avoid the introduction of arbitrary time limitations and conditions upon the power of the District Court in dealing with the case.

The appellants in their brief on re-argument filed prior to the December, 1953, hearing (p. 196, n. 447) observed that "taking of evidence by a Master" (appointed by this Court) "is undoubtedly a departure from normal practice on appeal." The appellees have suggested that, this being an appellate case, there is grave doubt whether under "the established chancery practice" this Court may receive new evidence and appoint a Master for that purpose, *Russell v. Southard*, 12 How. 139, 159 (1851), and also that under settled principles the "framing of decrees should take place in the District Court rather than in Appellate Courts," *International Salt Co. v. United States*, 332 U. S. 392 (1947).

The appellants also adverted to the fact that "even in the five cases joined for hearing, there appears to be no uniformity in the extent of the task of adjustment from segregated to non-segregated schools" (p. 195). Despite this they stated that they were unable, in good faith, to suggest terms for a decree contemplating gradual adjustment, observing that it would be customary procedure for those wishing postponement of relief to produce reasons therefor, whereupon they would be in a position to offer their views. The appellees, as above shown, contend that such procedure should be had in the District Court, and not this Court, and the briefs of both Attorneys General, above referred to, support this view (p. 197).

It is of interest to note the observations of counsel for the appellants in oral argument on December 9, 1952, on the question of the relief sought and deemed appropriate

by them in the instant action. He stated (Tr. of Oral Argument, December 9, 1952, pp. 23-24):

"So what do we have in the record? We have testimony of physical inequality. It is admitted. We have the testimony of experts as to the exact harm which is inherent in segregation wherever it occurs. That I would assume is too broad for the immediate decision, because after all, the only point before this Court is the statute as it was applied in Clarendon County. But if this Court would reverse and the case would be sent back, we are not asking for affirmative relief. That will not put anybody in any school. The only thing that we ask for is that the state-imposed racial segregation be taken off, and to leave the county school board, the county people, the district people, to work out their own solution of the problem to assign children on any reasonable basis they want to assign them on."

And further (p. 28):

"But I think the question as to what would happen if such decree was entered—I again point out that it is actually a matter that is for the school authorities to decide, and it is not a matter for us, it seems to me, as lawyers, to recommend except where there is racial discrimination or discrimination on one side or the other.

"But my emphasis is that all we are asking for is to take off this state-imposed segregation. It is the state-imposed part of it that affects the individual children. And the testimony in many instances is along that line."

And further (p. 29):

"It would be my position in a case like that, which is very much in answer to the brief filed by the United States in this case—it would be my position that the important thing is to get the principle established, and if a decree were entered saying that facilities are declared to be unequal and that the appellants are entitled to an injunction, and then the District Court issues the injunction, it would seem to me that it would

go without saying that the local school board had the time to do it. But obviously it could not do it overnight, and it might take six months to do it in one place and two months to do it in another place.

"Again, I say it is not a matter for judicial determination. That would be a matter for legislative determination."

We respectfully submit that, certainly in the instant case, the appropriate action to be taken by this Court is to remand the case to the District Court for the formulation of the decree by that Court.

As to what general directions this Court should give to the District Court in relation thereto, we think that there need be and should be none. The equity powers vested in the lower federal courts are ample to enable them to determine what decrees should be entered in reference to particular situations in the light of evidence taken to show what will best subserve the public and private interests involved. The lower courts are clearly in a better position to inquire into local conditions affecting the exercise of such powers than is this Court.

The courts of first instance can and should receive evidence on local conditions and the factors to be taken into account in determining the proper decrees to be entered in each situation; and they should hold hearings thereon after remand so that the parties can adduce such evidence. It is not believed by the appellees that any other procedure need be taken by such courts in connection with the formulation of their decrees.

CONCLUSION

The effective solution of the problems which arise under the Court's decision (to the extent that they are capable of solution) lies fundamentally in the legislative and administrative fields of governmental responsibility. The Court in its decision has declared the constitutional principle henceforth applicable to separate school systems in the public schools. This having been done, a decent respect for the sovereignty of the States affected, and a proper regard for the division of functions and responsibilities inherent in our system of government, warrants the judiciary in assuming that the legislative and administrative branches of the State governments are capable of undertaking the solution of the problems confronting them under the Fourteenth Amendment as now construed by the Court, and should have the opportunity of so doing.

The judicial process is not adapted to the handling of such matters. The Courts cannot compel the enactment of legislation or the adoption of administrative regulations; they cannot compel the levy of taxes or the making of appropriations. The Courts act negatively in the decrees which they enter in such cases. They may annul, but they cannot create; they may prohibit, but they cannot devise affirmative solutions and command their adoption.

There are those who would like to see the Court invade the legislative and administrative fields by devising "criteria of desegregation" to be included in its decrees in the pending cases, as conditions for the exercise of the equitable discretion of the lower courts, and hence in reality conditions for the exercise of the legislative and executive powers of the State governments. The theory is that thereby the Court would in effect make its present decisions applicable in detail and in advance to every State and school district in the Nation in which separate schools have

been maintained, and thus speed up the "integration" program.

The obvious difficulty with this theory is that such action by the Court would be indistinguishable in quality and purpose from legislative or administrative action, an attempt to shape and compel legislative and administrative action in derogation of legislative and administrative discretion and choice. Judicial power, in the words of the Court in *Muskrat v. United States*, 219 U. S. 346 (1911), is "the right to determine actual controversies arising between adverse litigants, duly instituted in courts of proper jurisdiction." It may be that the Congress could take some such action under the enforcement section of the Fourteenth Amendment, but affirmative action of that character is not consistent with the nature of the judicial power vested in the United States courts, nor is it consistent with such power to prejudge in such manner the great variety of local conditions and situations arising under the decision.

In opposing the exercise by the courts of their equitable discretion to permit effective and orderly gradual adjustment, the appellants have stressed the "personal and persent" nature of their respective rights, and contend that they should be accorded such rights without any delay. In this connection, however, the New Jersey experience with such adjustments cannot be ignored.

In New Jersey, as has been shown, with every factor favorable to such adjustments, the State constitutional change occurred in 1947. By September, 1951, there were still 3 school districts which had not accomplished adjustment, although they had taken substantial steps thereto, and because of the individual problems of many of the communities involved it proved impossible to devise and employ "any one formula." New Jersey is cited as an ex-

ample of successful adjustment, and yet there the program was not yet complete some four years after separate schools had been prohibited by the constitutional change there involved. The problems and difficulties facing the school authorities of this district greatly exceed those of any district in New Jersey, and are as great as any that will arise in any school district in the country.

In the instant case, legal segregation, or "state-imposed" segregation as the appellants call it, having been declared unconstitutional in the public schools, it seems fair to say that the appellants and others similarly situated will be deprived of little educational advantage by delay in integration of the pupils of the district, in view of the insignificant number of white pupils who would be re-assigned in the public school system of the district. We respectfully submit that the public interest requires that the instant case is a proper one to be remanded for further proceedings in the District Court, so that the school authorities will have the opportunity of presenting their problems fully to that tribunal, and of appealing to its equitable discretion in connection with their further handling of its affairs.

Respectfully submitted,

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November 15, 1954.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1954

No. 3

DOROTHY E. DAVIS, ET AL.,
Appellants,

v.

COUNTY SCHOOL BOARD OF PRINCE EDWARD COUNTY, VIRGINIA, ET AL.,
Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

BRIEF FOR APPELLEES ON FURTHER REARGUMENT

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I.

INTRODUCTION

The decision of this Court of May 17, 1954, has raised over most of the Virginia scene the spectre of impending educational chaos. If this Court is now to order immediate amalgamation of the races in the public schools of Prince Edward County, the spectre becomes a reality; if this Court now permits a reasonable time for the problems raised by its decision to be weighed and for alternatives to be considered without the heat of emotion created by unreasonable haste, the children in Prince Edward may still go to school. It is for that reason that the school authorities of Prince Edward County, supported by the Commonwealth of Virginia, now appear before this Court.

We make clear at the beginning that Virginia has no plan or panacea that will result in complete solution of this problem. We do not foresee a complete solution at any future time. Government still derives its foundation from the consent of the governed. The people of many sections of Virginia have stated forthrightly that they will not consent to compulsory integration of the races in the public schools. Neither court decree nor executive order can force in those sections a result so basically opposed by a united majority.

A solution to the problems posed by this Court's opinion of May 17, 1954, is now being sought by a commission of members of the General Assembly of Virginia appointed by the Governor. It is now obtaining, through public hearings, advice from organizations and people in all walks of Virginia life for the purpose of formulating a legislative program. If that commission is permitted to seek an orderly

solution to the questions before it, it will find the way within the framework of the law.

This Court has the power to grant the time required to enable Virginia to work towards orderly solution. That is what we now ask.

II.

SUMMARY OF ARGUMENT

1.

The Power to Permit Gradual Adjustment

The order for further reargument of this case rather than swift reversal is evidence of the power of this Court to permit gradual adjustment. But beyond that, this case is in all essential respects an action in equity. There is a well recognized rule that a court of equity may create, withhold, delay or condition any remedy that it finds appropriate. That rule has been accepted in terms by this Court.

The rule has not only been accepted; it has been applied. In anti-trust litigation periods of years have been granted by the courts for compliance with divestment decrees. Similarly, equitable relief has been deferred or withheld in reorganizations and in other fields.

There is no reason why this general rule should not apply in this case. There are, on the other hand, compelling reasons why it should apply. In earlier school cases, where equality of facilities was at issue, time was customarily permitted for equalization. Those cases concerned enforcement of the same right as that of the Appellants, and the fact of present right does not encompass the right to immediate remedy. The power to permit gradual adjustment clearly exists.

2.

The Necessity for Gradual Adjustment

As the power to permit gradual adjustment so clearly exists, it is equally clear that the power should be exercised in this case.

A major factor where schools are involved is community attitudes. Without a favorable community attitude, no satisfactory adjustment is possible. An antagonistic attitude has already been evidenced in Prince Edward County and many other sections of Virginia. Time must be permitted to seek a solution.

Ratio of the races in a mixed community is important; it is where the percentage of the Negro is substantial that the problem is the most difficult. Ratios of Negro pupils vary by communities in Virginia from zero to 77.3%. Education now follows one pattern in the State; a plan for local variation must be devised. Time is needed for the preparation of such a plan; without such a plan, Virginia's schools may be closed.

Other factors, such as levels of public health, educational attainment and area residence must be taken into account in devising a new plan for public education. An integrated system will require more than time; it will require a complete change in the feelings of the people. Only if time that this Court may properly permit is given to devise a workable plan can public education continue to serve its object and purpose.

3.

The Final Decree

The difficulty with present preparation of a final decree in this Court lies in the fact that there is no evidence of record

on which a final decree could be based. The evidence of record relates primarily to the effect of segregation; the final decree must generally be based on evidence as to the effect of integration. None is now before the Court; without it a final decree would be based purely on conjecture.

Furthermore, it is not the purpose of an appellate court to frame detailed decrees. The Court has never done it before in school cases; it has generally refused the task in other cases. The mere fact that the Court seeks now a statement of the issues to be determined by a final decree points up the impossibility of its present preparation.

Reference to a master is equally fruitless. That would merely be a cumbersome and impractical method of obtaining the evidence necessary for framing the decree. But the general rule, applicable here, is that appellate courts do not receive additional evidence in cases in equity on appeal. Furthermore, reference to a master implies the formulation of an overall rule while it is probable that flexibility of remedy will prove important in these cases arising under such different circumstances. This Court is remote from the local scene; the court below, because of familiarity with local conditions, is much better qualified to establish the detailed result.

The proper solution is reversal and remand to the court below for further proceedings in accordance with very general instructions to enforce the decision of this Court while permitting the preservation of the local school system. In this regard, the court below should be permitted to allow such time as is reasonably necessary consistent with the preservation of the school system and local community attitudes.

III.

ARGUMENT

1.

The Power to Permit Gradual Adjustment

As directed by the Court,[1] we discuss in this brief only the fourth and fifth questions stated by the Court in its order of June 8, 1953.[2]

The fourth question is phrased in simple terms of judicial power; we will discuss it for the most part in that light with only occasional reference to the facts. The fifth and last question assumes that the Court will permit gradual adjustment of the races in the public schools of Prince Edward County and passes on to the question of the appropriate decree. Between the two lies the question whether and to what extent the Court should exercise the judicial power that it so clearly possesses to stay immediate enforcement of its decision of May 17, 1954. We touch briefly on that point and on the facts that make time important if schools are to survive.

We turn first to the fourth question. It asks:

> "4. Assuming it is decided that segregation in public schools violates the Fourteenth Amendment,
>
> (a) Would a decree necessarily follow providing that, within the limits set by normal geographic school districting, Negro children should forthwith be admitted to schools of their choice, or
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> (b) May this Court, in the exercise of its equity powers, permit an effective gradual adjustment to be brought about from existing segregated systems to a system not based on color distinctions?"

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[1] 347 U. S. at 495.
[2] 345 U. S. at 972.

Merely to ask this question in the light of the history of this case is to find a substantial answer. If the Court had no power to permit gradual adjustment, it would simply have entered an order on May 17 reversing the decree of the court below with instructions to grant the relief sought. That the Court did not enter such an order is of itself evidence that it possesses the power to permit gradual adjustment.

Of course, the entry of such an order then as now would destroy the public schools of Prince Edward County. Even aside from this practical consequence, no such action is required because of the very nature of this proceeding. It is true that the Appellants sought a declaratory judgment, relief at law; but that was by no means their major purpose. Five of the paragraphs in the prayer for relief sought "a permanent injunction perpetually restraining and enjoining" the Appellees from doing something that the Appellants did not like. The action is therefore clearly brought in equity. And the powers of the chancellor to create, withhold, delay or condition the remedy as the situation may require cannot be denied:

> "Equitable remedies . . . are distinguished by their flexibility, their unlimited variety, their adaptability to circumstances, and the natural rules which govern their use. There is in fact no limit to their variety and application; the court of equity has the power of devising its remedy and shaping it so as to fit the changing circumstances of every case and the complex relations of all the parties."[3]
>
> * * *
>
> " . . . Courts of Equity . . . may adjust their decrees so as to meet most if not all of these exigencies; and

[3] 1 Pomeroy, *Equity Jurisprudence* (5th Ed. 1941) § 109.

they may vary, qualify, restrain, and model the remedy so as to suit it to mutual and adverse claims, controlling equities, and the real and substantial rights of all the parties."[4]

These principles so generally well recognized have been accepted in terms by this Court. It has said:

"The power of a court of equity, in the exercise of a sound discretion, to grant, upon equitable conditions, the extraordinary relief to which a plaintiff would otherwise be entitled, without condition, is undoubted. . . . It may prescribe the performance of conditions designed . . . to protect temporarily the public interest while its decree is being carried into effect."[5]

* * *

"Courts of equity may, and frequently do, go much farther both to give and withhold relief in furtherance of the public interest than they are accustomed to go when only private interests are involved."[6]

* * *

"It is always the duty of a court of equity to strike a proper balance between the needs of the plaintiff and the consequences of giving the desired relief."[7]

* * *

". . . 'equity will administer such relief as the exigencies of the case demand at the close of the trial.' "[8]

This Court has not only accepted these principles; it has also applied them. The application has been particularly

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[4] 1 Story, *Equity Jurisprudence* (14th Ed. 1918) § 28.

[5] *Central Kentucky Natural Gas Co.* v. *Railroad Commission*, 290 U. S. 264, 271 (1933).

[6] *Virginian Ry.* v. *System Federation No. 40*, 300 U. S. 515, 552 (1937).

[7] *Eccles* v. *Peoples Bank*, 333 U. S. 426, 431 (1948).

[8] *Chapman* v. *Sheridan-Wyoming Coal Co., Inc.*, 338 U. S. 621, 630 (1950).

marked in the anti-trust field. It appeared in the early cases. In the famous *Standard Oil* litigation, this Court postponed for equitable reasons the operation of the decree:

> "We think that in view of the magnitude of the interests involved and their complexity that [*sic*] the delay of thirty days allowed for executing the decree was too short and should be extended so as to embrace a period of at least six months."[9]

The same rule has been followed more recently. In the *National Lead* case, the decree ordered the defendants to present to the court within one year from its date a plan for divestment of their interests in certain other corporations, the plan to be completed within two years from the date of the decree. On appeal, this Court held that:

> ". . . the decree shall be deemed, for the purposes of those paragraphs and for the running of time thereunder, to take effect on the effective date of the mandate to be issued by this Court."[1]

Again, in *Hartford-Empire Co.* v. *United States*, where some of the defendants were given two years to dispose of certain property, this Court said:

> "We are of opinion that a longer time should be allowed. . . ."[2]

And for compliance with another decree of divestiture a

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[9] *Standard Oil Co.* v. *United States*, 221 U. S. 1, 81 (1911).

[1] *United States* v. *National Lead Co.*, 332 U. S. 319, 333, 364 (1947).

[2] 323 U. S. 386, 426 (1945). See also the approval of a two year period in *United States* v. *Timken Roller Bearing Co.*, 83 F. Supp. 284 (N. D. Ohio 1949), modified 341 U. S. 593 (1951).

period of one year was approved.[3] The final decree in one of the largest of the motion picture anti-trust cases permitted a three year period for compliance.[4] In analogous proceedings under the Public Utility Holding Company Act of 1935, Congress itself permitted one year, subject to extension, for compliance with divestment orders.[5]

In the field of receiverships, so long conducted in equity before the arrival of the modern technique of corporate reorganization, equity not only postponed the enforcement of rights but often enjoined them permanently. The reorganization of the Seaboard Air Line Railway was in process almost sixteen years before it was completed.[6] One of the purposes of such receiverships was to prevent damage to the public interest through interruption of operations that might otherwise occur.[7]

This Court has suggested that a State court temporarily refrain from enforcing an equitable remedy until other action has been taken.[8] It has provided "a reasonable time" for corrective action before enforcing the injunctive remedy.[9] And the New Jersey Court of Chancery, respected widely in the field of equity, has given counsel time to estab-

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[3] *United States* v. *Crescent Amusement Co.*, 323 U. S. 173 (1944).

[4] *United States* v. *Loew's, Inc.*, CCH Trade Cases ¶62,573 (S. D. N. Y. 1950). Earlier stages of this case reached this Court. *United States* v. *Paramount Pictures, Inc.*, 66 F. Supp. 323 (S. D. N. Y. 1946), 70 F. Supp. 53 (1947), reversed 334 U. S. 131 (1948); 85 F. Supp. 881 (1949), affirmed 339 U. S. 974 (1950). *Cf. United States* v. *Aluminum Company of America*, 91 F. Supp. 333, 419 (S. D. N. Y. 1950), where "a liberal time period" for compliance was approved.

[5] 15 U. S. C. §79k(c).

[6] *Guaranty Trust Co.* v. *Seaboard Air Line Ry.*, 68 F. Supp. 304, 305, 306 (E. D. Va. 1946).

[7] *Re Metropolitan Railway Recievership*, 208 U. S. 90, 112 (1908).

[8] *Radio Station WOW, Inc.* v. *Johnson*, 326 U. S. 120 (1945).

[9] *Georgia* v. *Tennessee Copper Co.*, 206 U. S. 230, 239 (1907).

lish ways and means for compliance with a contract subject to specific enforcement.[1]

This general rule has, in the public interest, particular applicability when action by a State is required. As this Court has said:

> "A question like the present should be disposed of without undue delay. But a State cannot be expected to move with the celerity of a private business man; it is enough if it proceeds, in the language of the English Chancery, with all deliberate speed. Assuming, as we do, that the Attorney General is correct in saying that only the Legislature of the defendant State can act, we are of opinion that the time has not come for granting the present motion [to proceed to decision]."[2]

Here, as in the cited case, the legislature must act;[3] here, as there, the Court may properly give the legislature appropriate time to reach a decision.

These are some of many cases where courts of equity stay their hands in recognition of the fact that precipitate action may result in greater harm than no action at all. That is a rule of general acceptance. Are there special circumstances why it is inapplicable here?

We can find no reason for a different rule. The general rule was usually applied before May 17, 1954, in cases where equalization of school facilities was the point at issue. Chief Judge Parker made that clear in his opinion in one of the cases now before this Court:

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[1] *Mueller* v. *Kraeuter & Co., Inc.*, 131 N. J. Eq. 475, 25 A. 2d 874 (Ch. 1942).

[2] *Virginia* v. *West Virginia*, 222 U. S. 17, 19-20 (1911). To the same effect, see the further opinion in the same case, 241 U. S. 531, 532 (1916).

[3] The next regular session of Virginia's General Assembly will convene on January 11, 1956. Va. Const. (1902) § 46.

> "In directing that the school facilities afforded Negroes within the district be equalized promptly with those afforded white persons, we are giving plaintiffs all the relief that they can reasonably ask and the relief that is ordinarily granted in cases of this sort. See Carter v. County School Board of Arlington County, Virginia, 4 Cir., 182 F. 2d 531."[4]

Certainly there should not have been one rule generally applied in times past for equalization and a more stringent rule applied now. Nor can a different result be reached because of this Court's statement some years ago that the "rights" with which we are here concerned "are personal and present."[5] This Court has now made clear, in broad outline at least, the nature of the rights of the Appellants by its decision of May 17, 1954. We do not discuss here the nature of those rights; what is at issue here is the remedy to enforce those rights. Whether a present right leads to an immediate remedy, even if the right has a constitutional basis, remains a matter for the discretion of this Court in the light of all the circumstances.

This Court has without question the power to permit time for adjustment to new conditions which produce patent complexities.

2.

The Necessity for Gradual Adjustment

There is a hiatus between the fourth and fifth questions asked by the Court: the fourth question asks simply whether the Court has the power to permit gradual adjustment, while the fifth question assumes gradual adjustment. Between the two lies the question whether the Court should

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[4] *Briggs* v. *Elliott*, 98 F. Supp. 529, 537 (E. D. S. C. 1951).

[5] *Sweatt* v. *Painter*, 339 U. S. 629, 635 (1950).

exercise the power to permit gradual adjustment that it so clearly possesses. It is to that question that this section of our argument is addressed.

The discussion on this point must of necessity include mention, in very general terms, of facts of public knowledge. The evidence of record for both sides was addressed, except for certain material as to equality of facilities, exclusively to the matter of the constitutional effect of segregation itself. No one on either side considered the means for enforcement of a decision such as the one that has now been made by this Court. The evidence now required and not in the record is as to the effect of changing from a segregated system to one not based on color distinctions.

As this Court has recognized by its refusal simply to reverse and remand the decision of the court below, there are weighty considerations impelling the conclusion that action in this field must not be too hasty. A very recent and comprehensive study of school segregation takes into account as to the States outside the South a consideration that is equally applicable throughout the nation:

> "The most important factor in integration of the public schools in the non-South, finally, is community attitudes. It is axiomatic that separate schools can be merged only with great difficulty, if at all, when a great majority of the citizens who support them are actively opposed to the move. No other public activity is so closely identified with local mores. Interest in the schools is universal, and it is an interest that directly involves not only the tax-payer but his family, and therefore his emotions. Those who are indifferent to all other community affairs tend to take a proprietary interest in the schools their children attend, or will attend, or have attended. State influence in public education has grown in recent years in proportion to the increase in state aid, but state policies rarely are so

important as local forces in the shaping of public educational policies and practices."[6]

The truth of this statement is widely recognized. An antagonistic community attitude will result in open conflict beneficial neither to the schools nor to the children. This was first reflected in the public press after May 17, 1954, by occurrences in places as peripheral as Milford, Delaware, and White Sulphur Springs, West Virginia. After that, disorder spread to Baltimore and the District of Columbia, areas of metropolitan size and larger Negro population. No conflict has arisen in the South where segregation remains the rule, but what may well be in store in those central areas where there is greater Negro concentration and more united sentiment is not difficult to imagine.

The community attitude of Prince Edward County, Virginia, has already been made clear. There is attached to this brief as Appendix A a resolution adopted on July 12, 1954, by the Board of Supervisors of the County. The Supervisors are not trained perhaps to legal niceties but they reflect in quite an accurate manner the community attitude of Prince Edward County.

This case concerns, of course, only Prince Edward County and any action taken by the Court will bind only Prince Edward County for its school officials are the only ones before the Court. But Virginia is naturally interested on a broader basis and any action taken here would have its impact on other Virginia communities. For that reason, we point out that the attitude expressed by the community of Prince Edward is identical with that of many other Virginia localities. More than thirty counties and cities, through their legislative or school bodies, have expressed this atti-

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[6]Ashmore, *The Negro and the Schools* (Chapel Hill 1954) 81 2.

tude by resolutions filed with the Governor of Virginia. A list of these is placed at the foot of Appendix A. All that this means is that, if this Court's opinion of May 17, 1954, is ever to be accepted by the people of many sections of Virginia, and it may never be, a substantial period for adjustment must be permitted by this Court. Without community acceptance, public education as we know it now will not survive in those localities.

This brings us to the second major problem in Virginia as a whole. Ratio of population is of great significance in the solution to segregation. The study quoted above is emphatic on this point:

> "The ratio of Negro to white population is not a final determinant of racial attitudes, but it is perhaps the most powerful single influence, for the practical results of desegregation depend heavily upon it. This, more than anything else, seems to account for the great variation in the degree of expressed concern in the South over the steadily rising status of the Negro in the last generation—which has led finally to the demand for admission to the white schools. The Upland South, for example, found little to alarm it in the Negro's successful legal battle for the ballot, for there his numbers are not sufficient to give him control of local politics. The whites in the Black Belt, however, have had to face the prospect of becoming members of a political minority and many of them are still resisting, although the only means left to them are extra-legal."[7]

The question of ratio of population has particular significance in Virginia. The percentage of Negro school children ranges from zero in Buchanan, Craig and Highland Counties to 77.3% in Charles City County. A map of Vir-

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[7] *Id.* at p. 128.

ginia showing the general relation is included in Appendix B and it is supported by a table giving the specific relation in all Virginia localities.

In general, education in Virginia has operated in the past pursuant to a single plan centrally controlled with regard to segregation of the races. It would be most unfortunate if the decision of this Court on May 17, 1954, affected adversely the schools in Craig County where there are no Negro pupils as well as those in Charles City County. So some plan for local variation must be devised. That is one of the purposes for the Governor's commission of which mention has already been made. But if no time is permitted for the establishment of such a plan, the majority in Virginia are so determined that it is possible that all of Virginia's public schools will be closed for the period required to establish a new system, a period perhaps of years.

In the preparation of any plan, there are many other factors for consideration. The Court implies in its questions that the geographic location of residence is alone significant. But this seems perhaps an oversimplification. Is it not relevant to consider the general level of educational capacity and attainment between the two races? Should not general standards of health and morals be considered? What of the teacher force? If white parents and children are opposed to Negro teachers, should not some plan be worked out to minimize dissension and yet be fair to the Negro teachers? These are only a few of the many problems for consideration in the development of a new educational system. The blueprint for that system requires investigation of facts, study and resolution; all is now under way; time is required for decision.

The problem facing Virginia is a difficult one. It is the problem of coping with the decision of May 17, 1954. How best can Virginia coordinate that ruling with the

feeling of a majority of her people and the requirement that her children be educated? That is the basic problem under consideration. To reach the proper answer requires time. Even a generation may not be long enough for solution, but to find the beginning of the path to solution requires a substantial period of adjustment.

These in broad outline are the reasons why, in our view, this Court should permit a gradual adjustment. Otherwise, it may well drive Virginia's children from her schools.

3.

The Final Decree

In this background, we come to the fifth and last of the Court's questions:

> "5. On the assumption on which Questions 4(a) and (b) are based, and asuming further that this Court will exercise its equity powers to the end described in Question 4(b)
>
> (a) Should this Court formulate detailed decrees in these cases;
>
> (b) If so, what specific issues should the decrees reach;
>
> (c) Should this Court appoint a special master to hear evidence with a view to recommending specific terms for such decrees;
>
> (d) Should this Court remand to the courts of first instance with directions to frame decrees in these cases, and if so, what general directions should the decrees of this Court include and what procedures should the courts of first instance follow in arriving at the specific terms of more detailed decrees?"

We take up this question part by part.

A.

Detailed Decree by This Court

There is in our opinion one overwhelming reason why this Court should not formulate a detailed decree in this case. That is because the record at this time contains no evidence at all as to the facts on which such a decree should be based.

At the risk of repetition, we point out again that the facts of record relate only to the effect of *segregation;* what any detailed decree now entered must be based on is evidence as to the effect of *integration.* They are very different facts; they require very different expert testimony to determine. What now becomes important is evidence of community attitudes, public health, standards of educational capacity and achievement and many other matters. But none of this evidence is now of record. Without it, any detailed decree now made by this Court would be based either on preconceived notions of fact or on offers of proof by counsel.

Neither of these bases affords a satisfactory approach to the solution of so difficult a problem. It is inconceivable that an uninformed solution will be a satisfactory one. Yet any detailed decree now formulated by the Court would be based only on a lack of knowledge of the facts required for decision.

This is the principal reason why this Court should not now formulate a detailed decree in this case. It has never done so before with regard to schools. In three of the recent school cases, the court below was directed to take further "proceedings not inconsistent with" the opinion of this Court;[8] in the fourth case, the judgment below was simply

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[8] *Missouri* ex rel. *Gaines* v. *Canada*, 305 U. S. 337, 352 (1938); *Sipuel* v. *Board of Regents*, 332 U. S. 631, 633 (1948); *Sweatt* v. *Painter*, 339 U. S. 629, 636 (1950).

reversed.[9] These cases are apt precedents for those now before this Court in this regard.

From a broader viewpoint, this Court has properly shunned the task of preparing detailed decrees where other courts are available to assume that task. This Court has said:

> "The framing of decrees should take place in the District rather than in Appellate Courts. They are invested with large discretion to model their judgments to fit the exigencies of the particular case."[1]
>
> * * *
>
> ". . . in order to prevent any complication and to clearly define the situation we think instead of affirming and modifying, our decree, in view of the broad nature of our conclusions, should be one of reversal and remanding with directions to the court below to enter a decree in conformity with this opinion and to take such further steps as may be necessary to fully carry out the directions which we have given."[2]
>
> * * *
>
> "We would exceed our appellate functions were we to adopt that suggestion [to approve a specific form of relief] in this case."[3]

It is true, of course, that this Court has often modified decrees of lower courts in a specific manner. But that is something quite different from the construction of an entire decree in a complex case. What Mr. Justice Rutledge said in dissent in an anti-trust case is equally applicable here:

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[9] *McLaurin* v. *Oklahoma State Regents*, 339 U. S. 637, 642 (1950).

[1] *International Salt Co., Inc.* v. *United States*, 332 U. S. 392, 400-1 (1947).

[2] *United States* v. *American Tobacco Co.*, 221 U. S. 106, 188 (1911).

[3] *Besser Manufacturing Co.* v. *United States*, 343 U. S. 444, 449 (1952).

> "Shortly, in my view it is not this Court's business to fashion or rewrite the decree. . . . The reasons which thus ordinarily restrict the scope of appellate review have magnified force in anti-trust proceedings. Their complex character usually requires, as in this case, months or years for the trial court's consideration. With its maximum attention, this Court cannot possibly attain the same detailed familiarity with the cause. Nor can it frame at long distance, with the same assurance, a decree adequate for the necessity.
>
> "The so-called equitable character of the proceeding does not nullify this inherent limitation upon appellate judicial action."[4]

There is no reason why this Court should depart from its established rule that the action to be taken here is that of reversal and remand with instructions for further proceedings. To formulate and enter a detailed decree now would be contrary to this practice established by many prior decisions. Furthermore, in the present status of the case, without evidence of facts and conditions relating to the circumstances to be encountered in the operation of the decree, that action by the Court is substantially impossible.

B.

Specific Details of a Present Decree

In view of our conviction that this Court should not now undertake to formulate a detailed decree, it would not be fruitful for us to discuss the specific issues to be reached by such a decree.

It appears, however, that the mere fact that this question was asked by the Court points up the difficulty of presently

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[4] *Hartford-Empire Co.* v. *United States*, 323 U. S. 386, 441 (1945).

framing a detailed decree. The Court is not now advised of the specific issues to be met and decided. Certainly where *what* is to be decided remains obscure, *how* to decide is even further remote. It does not seem too much to say that courts should not decide cases until they have been advised of the issues in question.

But in this case, even if the issues that the Court seeks were to be developed in the briefs of counsel on appeal, in itself a novelty, it might then be proposed that the Court proceed to decide those issues without a hearing, without evidence, without cross-examination, but only on assertions of fact, again made not by witnesses but by counsel, and on certain general notions of the propriety of things. We would not have considered this an acceptable program under any circumstances; we do not believe that the Court will undertake to follow it now.

On a record where issues have not been developed, we do not and, indeed, cannot suggest specific issues for consideration in the formulation of a detailed decree.

C.

Reference to a Master

We turn next to the question whether it would be proper to refer this case and its companions to a master to receive testimony as to issues to be faced in making the final decree. In our opinion, a reference of this character would be improper and would serve no useful purpose.

Masters, like auditors, are, in the words of Mr. Chief Justice Marshall, simply "agents or officers of the court."[5] Courts have:

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[5] *Field* v. *Holland*, 6 Cranch 8, 21 (1810).

> ". . . inherent power . . . to appoint persons unconnected with the court to aid judges in the performance of specific judicial duties, as they may arise in the progress of a cause."[6]

But all that this means is that the court may to a limited extent give to an officer appointed by it the power to exercise some of its powers. The court cannot, on the other hand, give to such an officer powers that the court does not itself possess.

This Court has often appointed special masters. But it has made such appointments, so far as we can find, only where its original jurisdiction has been invoked. In those cases (and particularly in cases between States) the masters have relieved the Court of the burdensome duty of hearing and sifting evidence. The master hears and finds; the Court reviews and decrees.

In those cases, the Court has the duty to receive evidence and make findings of fact. In this case, the Court has no power to receive evidence. Mr. Chief Justice Taney considered the question of the power of this Court to receive evidence on appeal. He said:

> "This court must affirm or reverse upon the case as it appears in the record. We cannot look out of it for testimony to influence the judgment of this court sitting as an appellate tribunal. And, according to the practice of the Court of Chancery from its earliest history to the present time, no paper not before the court can be read on the hearing of an appeal. . . .
>
> "Indeed, if the established chancery practice had been otherwise, the Act of Congress of March 3d, 1803, expressly prohibits the introduction of new evidence, in

[6] *Ex parte Peterson*, 253 U. S. 300, 312 (1920).

> this court, on the hearing of an appeal from a circuit court, except in admiralty and prize causes."[7]

The rule so established is generally accepted. Courts of appeal do not go out to receive new evidence; that is simply beyond their function.

But we do not base our answer here on any rule of ritual, however forceful and of long standing. The appointment of a master can serve no really useful purpose. It would assume that all of these five cases are alike, that one plan, one set of rules, one pattern can be devised to solve a single question raised by each of them. There is the further implication that, in a legislative manner, the Court may enact these general regulations for application wherever segregation in the schools may be found.

The assumption is contrary to the facts as this Court has already recognized in its decision in this case by its reference to the "great variety of local conditions."[8] In Wilmington, Delaware, segregation no longer exists; this Court need not therefore bother with the establishment of rules for that case. The same is true in Topeka, Kansas, and in the District of Columbia where segregation will have disappeared almost before this Court's mandates can find their way to the District Courts. So no master and no pattern are needed for those cases.

The Court is left then to consider Prince Edward County, Virginia, and Clarendon County, South Carolina. There is no reason to assume that the proper decree for one of these counties will be proper for the other; in fact, we suggest the likelihood that different solutions will probably prove most appropriate. Furthermore, even if this Court should establish two patterns to fit those two counties, a dangerous prece-

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[7] *Russell* v. *Southard*, 12 How. 139, 159 (1851). The statute referred to is found in 2 Stat. 244 (1803). Although it was omitted in the recodification of the Judicial Code in 1948 (62 Stat. 992), that omission cannot be taken to result in a change of the rule.

[8] 347 U. S. at 495.

dent would be established. Lower courts would no doubt hesitate in other counties under different conditions to depart from precedents so augustly promulgated. The result would be a loss of the flexibility of remedy which is the hallmark of equity and which provides the greatest possibility of successful solution of this difficult question on an area-wide basis.

Finally, we suggest that many of the considerations relevant in regard to the present formulation of a detailed decree apply equally to the use of a master to reach the same result. Perhaps the chief of these is the remoteness of this Court from the scene where its decision is to be effective. The court below of necessity has much greater familiarity with local conditions than this Court has or can possibly acquire. This Court can and should prepare the frame; it should leave the details of design to the court below, where the duty lies to paint in the details within the framework established by this Court.

It will not assist to achieve the proper result in this case to refer it to a master to receive testimony and report.

D.

The Path for Future Action

This final part is three questions in one. To the first part, which is whether this case should be remanded to the court below for further action, our answer is in the unqualified affirmative. This is of necessity true since all other alternatives have been tried and found unacceptable.

It is our opinion that this Court should give the court below a broad field for effective operation and that it should include only general directions in its decree. One such direction has already been given: segregation in education

by race or color offends the Constitution of the United States. In comparison with that direction, all others lose most of their significance. But some are of importance.

First, the court below should be instructed that ample time may be allowed for that first direction of the court to be made fully effective. We do not believe that this Court should attempt to establish any specific limit of time. This Court cannot know (nor, in fact, do we) how long will be required, if the public school system is to be preserved, for the full operation of its new rule as to segregation by race or color. Conditions over which we have no control make it clear that a very substantial period of time will be required.

Next, the court below should be permitted to take into account the physical problems that will now arise. These include use of school buildings and transportation facilities. Time will be required to work out plans for the use of physical facilities.

The court below should then be authorized to take into account intangible factors that affect the solution of the problem. These include general levels of health, morals and educational capacity and attainment. Even more basically, that court must be permitted to consider the feelings of the children, their parents and their community. Are the Appellants so determined that segregated education be destroyed that they are willing to destroy all of education? That would indeed be a Pyrrhic victory. Leading authorities have emphasized the importance of community attitudes and events in outlying areas since May 17, 1954, have proved that, in fact, community attitudes may impede or frustrate amalgamation. It seems to us important that schools continue and more important that they continue than how they continue. If this Court requires the court below to disregard these factors, it is overlooking the realities of the situation.

Finally, the court below should be permitted to take into

account any other factor that may be presented by the parties. The commission appointed by the Governor of Virginia is engaged in receiving testimony as to facts existing in various sections of the State. Some of the facts developed may establish considerations now unknown relevant to Prince Edward County. The court below should not be tied down to any pattern.

Further procedure below, the third matter to be considered in this subdivision, should be made equally flexible. The court below should set a date on which it will hear evidence from the parties within the framework of this Court's opinions as to the provisions of its final decree. That court should be free to supervise future action in Prince Edward County to assure the enforcement of this Court's mandate as speedily as possible consistent with the maintenance of an effective system of public education in the County. Local officials should not be permitted to drag their feet, but they should not be asked to run so fast that destruction results. Education of public opinion will be required; officials should be permitted to lead for they cannot be driven.

The court below is fully equipped to carry out directions of this Court phrased in these terms. That is the best course of action for the Appellants and all those that they represent as well as for those like the Appellees who have opposed their basic views.

IV.

CONCLUSION

In conclusion, we reiterate that we know of no short path to solution of the problems raised by this Court's decision of May 17, 1954. No money judgment may be entered and

paid and the case then put aside to gather dust in the files. We anticipate continuing problems and, perhaps, prolonged social disorder; the generation of litigation foreseen with trepidation by some members of this Court will not be forestalled by any action now taken.

Our desire is to minimize any conflict that may now result and to preserve the public education of Virginia's children. We have outlined in this brief the best way in our opinion that the chances of achieving this aim may now be enhanced. We know that some of the alternatives that others will suggest will frustrate the achievement. The future is still cloudy and shows few signs of clearing; the path that we suggest seems to us the safest to follow in the difficult days that now lie ahead for our public education.

Dated November 15, 1954.

Respectfully submitted,

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For the Commonwealth of Virginia

1.

Resolution Adopted by the Board of Supervisors of Prince Edward County

At a meeting of the Board of Supervisors of Prince Edward County, held on July 12, 1954, the following resolution was adopted:

WHEREAS, the Supreme Court of the United States has in a recent decision purportedly held that the provision of the Constitution of Virginia requiring segregation in public schools to be unconstitutional, and the said Court having indicated its intention to enter a decree implementing the decision some time in the future; and,

WHEREAS, it is the opinion of this board that such decision is to the detriment of public education in Virginia and an invasion on the rights of the citizens of the Commonwealth.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF SUPERVISORS OF PRINCE EDWARD COUNTY, VIRGINIA:

1st.

That the said Board is unalterably opposed to the operation of nonsegregated public schools in the Commonwealth of Virginia.

2nd.

That this Board is of the opinion that it is not only impracticable, but that it will be impossible to operate a nonsegregated school system in the Commonwealth of Virginia.

3rd.

That the said Board intends to use its power, authority and efforts to insure a continuation of a segregated school system in the Commonwealth of Virginia.

4th.

That it urges all the officials of the Commonwealth to take such action as may be necessary to insure the continuation of a segregated school system in the Commonwealth of Virginia.

5th.

That the Clerk of this Board be instructed to send a copy of this resolution to the Governor, Attorney General, State Senator and Representative in the House of Delegates.

2.

List of Virginia Localities Where Boards of Supervisors and School Boards Have Adopted Resolutions Opposing Amalgamation.

Boards of Supervisors

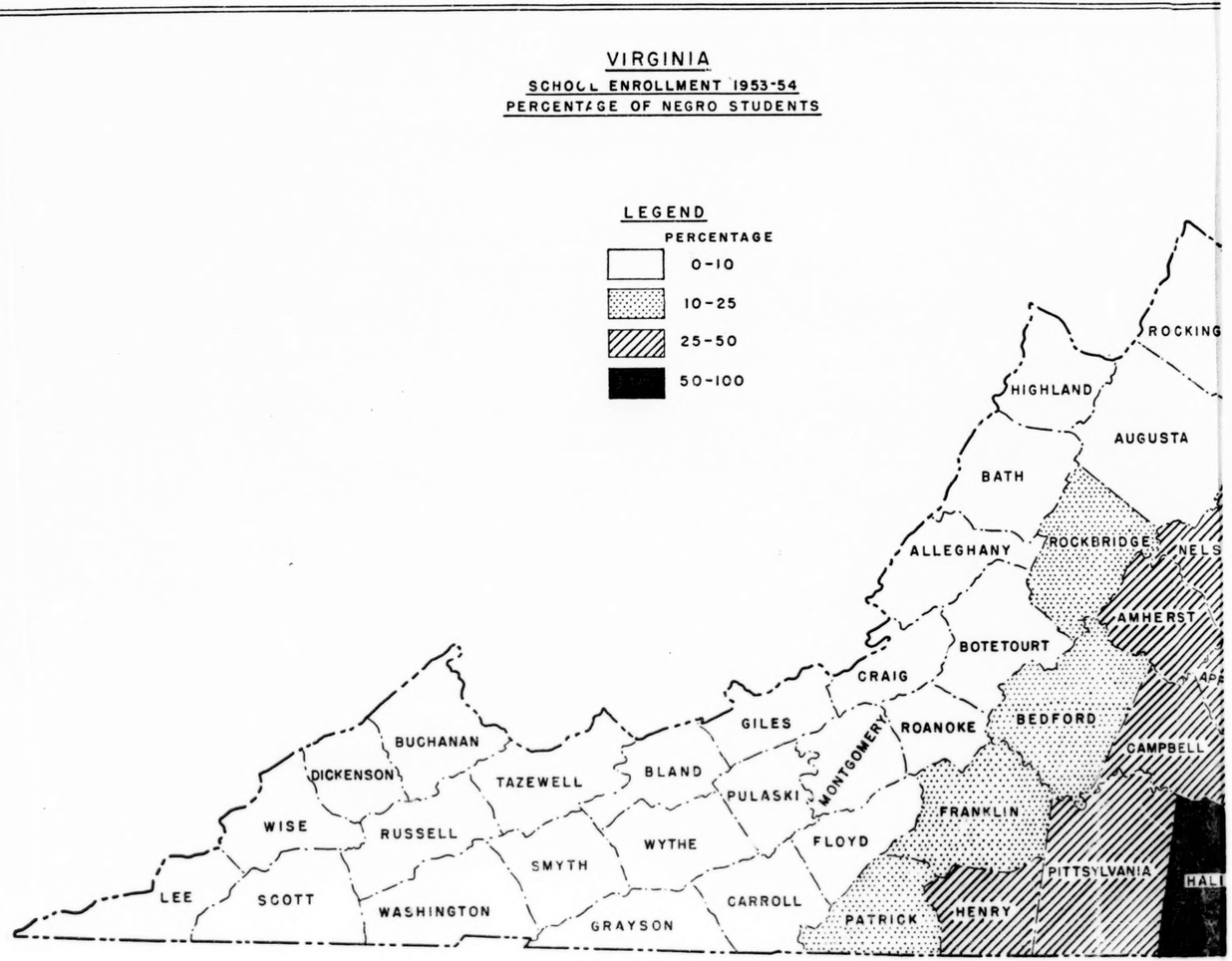
Albemarle
Amelia
Amherst
Appomattox
Brunswick
Buckingham
Charlotte
Culpeper
Cumberland
Dinwiddie
Essex
Fauquier
Greene
Greensville
Halifax
Hanover
Lunenburg
Mecklenburg
Middlesex
Nansemond
New Kent
Northumberland
Nottoway
Pittsylvania
Powhatan
Prince Edward
Southampton
Stafford
Surry
Sussex

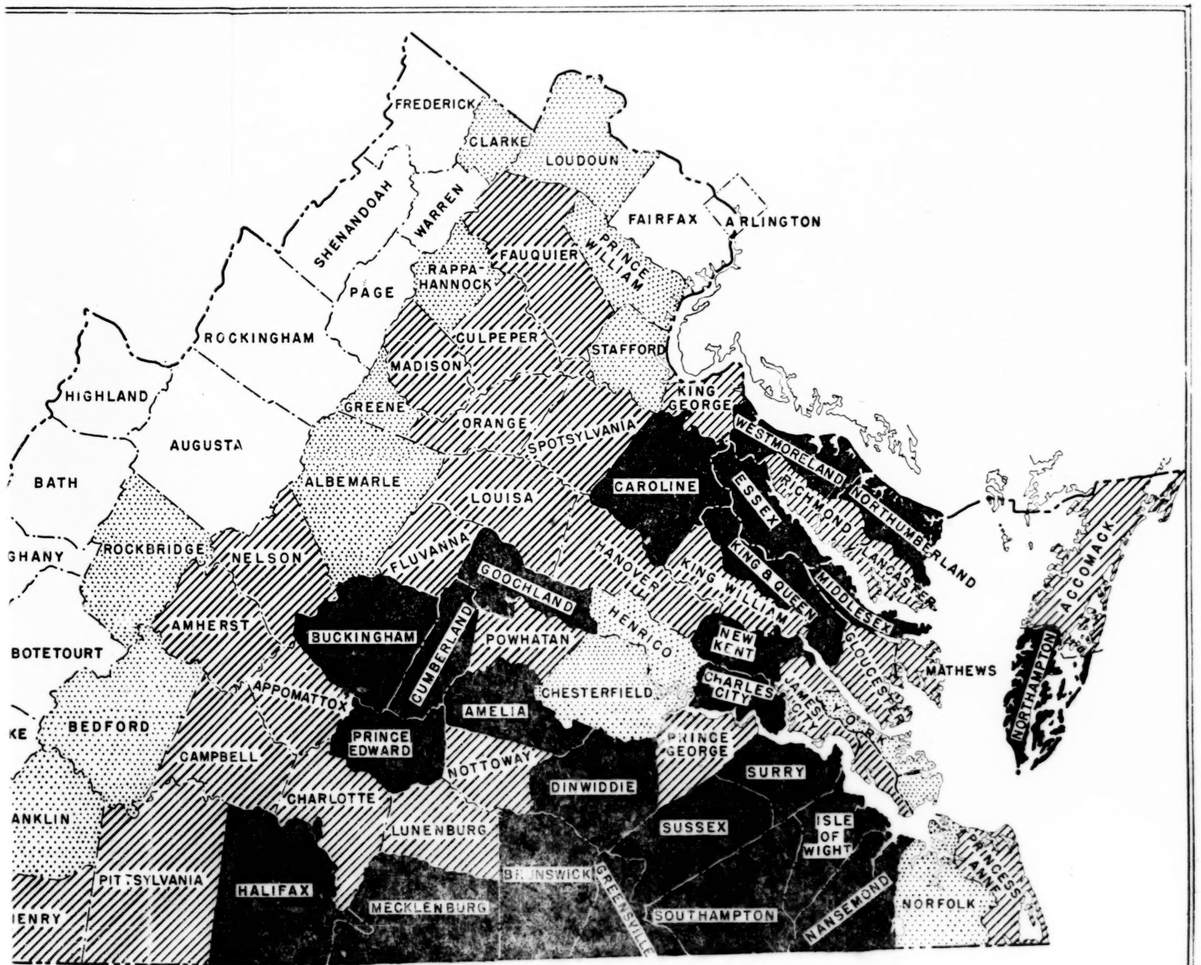
School Boards

Brunswick
Greensville
Mecklenburg
Nansemond
New Kent
Powhatan
Southampton
South Norfolk
Surry

VIRGINIA

SCHOOL ENROLLMENT 1953-54
PERCENTAGE OF NEGRO STUDENTS





Virginia Population and School Enrollment By Race

COUNTIES

	Population			School Enrollment		
	White	Negro	Per Cent Negro	White	Negro	Per Cent Negro
Accomack	22,263	11,567	34.2	3,617	2,484	40.7
Albemarle	21,713	4,946	18.6	3,982	1,097	21.6
Alleghany	21,228	1,807	8.3	4,873	457	8.5
Amelia	3,960	3,945	49.9	926	1,050	53.1
Amherst	14,661	5,661	27.9	2,520	1,462	36.7
Appomattox	6,596	2,160	24.7	1,511	676	30.9
Arlington	128,780	6,517	4.9	20,513	1,235	5.7
Augusta	32,422	1,729	5.1	7,473	372	4.7
Bath	5,634	661	10.5	1,174	71	5.7
Bedford	24,003	5,617	19.0	5,433	1,377	20.2
Bland	6,307	129	2.0	1,423	20	1.4
Botetourt	14,167	1,595	10.1	3,419	372	9.8
Brunswick	8,488	11,643	57.8	1,676	3,260	66.0
Buchanan	35,738	7	....	10,895	..	0.0
Buckingham	7,031	5,255	42.8	1,409	1,484	51.3
Campbell	22,031	6,843	23.7	4,912	1,915	28.0
Caroline	6,058	6,377	51.3	1,269	1,896	59.9
Carroll	26,300	392	1.5	5,325	16	0.3
Charles City	889	3,514	81.0	285	970	77.3
Charlotte	8,307	5,748	40.9	1,938	1,589	45.0
Chesterfield	31,969	8,412	20.9	7,429	1,903	20.4
Clarke	5,858	1,214	17.2	1,333	307	18.7
Craig	3,435	16	0.5	664	....	0.0
Culpeper	9,543	3,697	27.9	2,157	1,115	34.0
Cumberland	3,211	4,041	55.7	698	959	57.8
Dickenson	23,072	319	1.4	6,460	57	0.9
Dinwiddie	6,663	12,172	64.6	1,455	2,352	61.8
Essex	3,522	3,008	46.1	763	813	51.6
Fairfax	88,712	9,700	10.0	25,710	1,787	6.5
Fauquier	15,659	5,576	26.3	3,327	1,438	30.2

COUNTIES

	Population			School Enrollment		
	White	Negro	Per Cent Negro	White	Negro	Per Cent Negro
Floyd	10,860	490	4.3	2,768	154	5.3
Fluvanna	4,621	2,498	35.1	890	608	40.6
Franklin	20,978	3,576	14.6	4,986	968	16.3
Frederick	17,147	389	2.2	4,007	81	2.0
Giles	18,485	468	2.5	4,664	101	2.1
Gloucester	7,101	3,242	31.3	1,648	726	30.6
Goochland	4,465	4,468	50.0	804	953	54.2
Grayson	20,446	932	4.4	5,038	238	4.5
Greene	4,103	642	13.5	958	157	14.1
Greensville	6,649	9,665	59.3	1,463	2,588	63.9
Halifax	23,219	18,087	44.0	5,101	5,415	51.5
Hanover	15,208	6,766	30.8	3,397	1,638	32.5
Henrico	51,650	5,679	9.9	11,771	1,371	10.4
Henry	23,650	7,565	24.2	5,816	2,210	27.5
Highland	3,951	118	2.9	790	....	0.0
Isle of Wight	7,164	7,742	51.9	1,704	2,015	54.2
James City	3,377	2,939	46.5	323	251	43.7
King George	4,869	1,839	27.4	834	520	38.4
King & Queen	2,910	3,370	53.8	676	880	56.5
King William	4,092	3,269	46.1	909	823	47.5
Lancaster	5,078	3,561	41.2	945	726	43.4
Lee	35,696	407	1.1	8,018	77	0.9
Loudoun	17,163	3,980	18.8	3,787	1,049	21.7
Louisa	7,717	5,109	39.8	1,654	1,482	47.2
Lunenburg	7,926	6,184	43.9	1,793	1,773	49.7
Madison	6,358	1,911	23.1	1,274	523	29.1
Mathews	5,365	1,782	24.9	936	398	29.8
Mecklenburg	16,927	16,557	49.5	3,583	4,803	57.3
Middlesex	3,901	2,813	41.9	689	715	50.9
Montgomery	28,192	1,569	5.3	6,079	367	5.7
Nansemond	8,748	16,480	65.3	2,170	4,184	65.8
Nelson	10,249	3,793	27.0	2,209	1,009	31.3
New Kent	1,838	2,096	54.0	448	494	52.4
Norfolk	83,611	16,264	16.3	22,867	3,910	14.6
Northampton	8,045	9,252	53.5	1,284	2,025	61.2

COUNTIES

	Population			School Enrollment		
	White	Negro	Per Cent Negro	White	Negro	Per Cent Negro
Northumberland	5,924	4,087	40.8	1,004	1,146	53.3
Nottoway	8,686	6,789	43.9	2,237	1,801	44.6
Orange	9,354	3,398	26.7	1,995	883	30.7
Page	14,588	557	3.7	3,401	132	3.7
Patrick	14,327	1,315	8.4	3,512	409	10.4
Pittsylvania	45,675	20,409	30.9	8,549	5,879	40.7
Powhatan	3,136	2,419	43.6	711	594	45.5
Prince Edward	8,538	6,860	44.6	1,512	1,852	55.0
Prince George	13,720	5,915	30.3	1,447	973	40.2
Princess Anne	32,341*	9,876*	23.5	6,814	2,310	25.3
Prince William	19,911	2,692	11.9	4,242	683	13.9
Pulaski	25,685	2,069	7.5	6,550	498	7.1
Rappahannock	5,029	1,081	17.7	1,108	236	17.6
Richmond	4,062	2,124	34.4	847	659	43.8
Roanoke	37,970	3,498	8.5	8,723	749	7.9
Rockbridge	21,343	2,006	8.6	4,116	464	10.1
Rockingham	34,414	638	1.9	7,137	29	0.4
Russell	26,137	677	2.5	6,617	146	2.2
Scott	27,367	269	1.0	6,541	32	0.5
Shenandoah	20,780	383	1.8	4,584	68	1.5
Smyth	29,695	481	1.6	7,198	135	1.8
Southampton	10,359	16,160	60.9	2,131	3,985	65.1
Spotsylvania	9,075	2,842	23.9	2,072	838	28.8
Stafford	10,372	1,519	12.9	2,270	355	13.5
Surry	2,249	3,963	63.8	359	1,135	76.0
Sussex	4,393	8,387	65.6	1,036	2,144	67.4
Tazewell	44,632	2,871	6.1	11,547	581	4.8
Warren	13,610	1,187	8.0	3,105	287	8.5
Washington	36,321	1,196	3.2	8,833	147	1.6
Westmoreland	5,532	4,615	45.5	1,171	1,244	51.5
Wise	53,979	2,352	4.2	13,964	479	3.3
Wythe	22,235	1,092	4.7	5,210	301	5.5
York	8,674	3,067	26.2	1,994	537	21.2
Total—Counties	1,740,093	436,664	20.1	381,217	108,108	22.1

* Includes City of Virginia Beach.

CITIES

	Population			School Enrollment		
	White	Negro	Per Cent Negro	White	Negro	Per Cent Negro
Alexandria	54,121	7,622	12.4	9,428	1,437	13.2
Bristol	14,829	1,124	7.1	3,332	325	8.9
Buena Vista	4,997	216	4.2	1,146	23	2.0
Charlottesville	21,249	4,712	18.2	3,408	974	22.2
Clifton Forge	4,745	1,049	18.1	832	292	26.0
Colonial Heights	6,067	9	0.2	902	....	0.0
Danville	24,483	10,579	30.2	6,391	2,371	27.1
Falls Church	7,401	133	1.8	1,687	....	0.0
Fredericksburg	10,199	1,952	16.1	1,587	452	22.1
Hampton	47,506	13,460	22.1	10,749	2,741	20.3
Harrisonburg	10,126	681	6.3	1,724	252	12.7
Hopewell	8,702	1,505	14.8	2,695	699	20.6
Lynchburg	37,247	10,473	22.0	6,526	2,330	26.3
Martinsville	12,205	5,043	29.3	2,569	1,242	32.6
Newport News	24,058	18,214	43.2	4,230	4,335	50.1
Norfolk	150,065	62,826	29.7	19,755	11,722	37.2
Petersburg	20,252	14,776	42.2	3,618	2,951	44.9
Portsmouth	49,310	30,494	38.4	7,352	6,613	47.4
Radford	8,393	631	7.0	1,786	177	9.0
Richmond	157,228	72,996	31.7	22,031	15,729	41.6
Roanoke	77,329	14,575	15.9	13,123	2,956	18.4
South Norfolk	8,036	2,394	23.0	3,948	1,184	23.1
Staunton	17,760	2,165	10.9	1,915	446	18.9
Suffolk	7,813	4,521	36.7	1,501	876	36.9
Virginia Beach	....	....	....	1,772	....	0.0
Warwick	27,440	12,367	31.1	6,672	3,014	31.1
Waynesboro	11,348	1,007	8.2	2,204	235	9.6
Williamsburg	5,862	871	13.0	1,044	973	48.2
Winchester	12,689	1,152	8.3	2,303	281	10.9
Total — Cities	841,462	297,547	26.1	141,948	64,004	31.1
Total — State	2,581,555	734,211	22.2	523,165	172,112	24.8

NOTE—Population figures, taken from the 1950 census, do not include 2,914 of other races. Enrollment figures are for the session 1953-1954.

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SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1954

No. 3

DOROTHY E. DAVIS, ET AL.,
Appellants,

v.

COUNTY SCHOOL BOARD OF PRINCE EDWARD COUNTY, VIRGINIA, ET AL.,
Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

SUPPLEMENTAL MEMORANDUM FOR APPELLEES ON FURTHER REARGUMENT

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Dated April 8, 1955.

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I.

INTRODUCTION

On November 15, 1954, fourteen briefs were filed with the Court in these cases. Because briefs were filed simultaneously, no party has had a substantial opportunity to comment on the positions taken by others in those briefs. The brief filed for the United States in particular requires comment. In addition, almost five months have now elapsed since those briefs were filed and in the field of segregation the picture is never completely static.

For these reasons, it seems to us appropriate to present to the Court this short Memorandum as a supplement to our Brief that was filed last fall.

II.

THE REPORT OF THE COMMISSION

On August 30, 1954, the Governor of Virginia appointed a Commission to consider the effect on Virginia of the decision of this Court in this case on May 17, 1954. This Commission was authorized by the Governor to recommend a course of future action. Because, action to reconstitute the school system of Virginia can be taken only by the General Assembly of Virginia, this Commission consisted entirely of members of the General Assembly. Its membership numbers 32, almost one-quarter of the General Assembly.

On January 19, 1955, the Commission presented an interim report to the Governor. That report, a short paper, is reprinted in full in the Appendix. It represents the considered judgment of a substantial percentage of the men and women responsible for the government of Virginia;

it is not an appeal for self-exaltation through publicity, nor an incitement to violence, nor an expression of helpless dismay; it is rather a statement of fact as to the present and intention as to the future. It deserves the study of this Court.

The last three paragraphs of the report present the conclusions of the Commission so cogently that they are reprinted here:

> "The public hearing held in Richmond, the content of many communications to Your Excellency and to the Commission, conversations with the people of this Commonwealth, and the actions taken by a majority of the boards of supervisors of the counties, and by school boards and other organizations, have convinced the Commission that the overwhelming majority of the people of Virginia are not only opposed to integration of the white and negro children of this State, but are firmly convinced that integration of the public school system without due regard to the convictions of the majority of the people and without regard to local conditions, would virtually destroy or seriously impair the public school system in many sections in Virginia.
>
> "The welfare of the public school system is based on the support of the people who provide the revenues which maintain it, and unless that system is operated in accordance with the convictions of the people who pay the costs, it cannot survive; and this is particularly true in Virginia where a large percentage of the cost of public education is dependent upon local revenues.
>
> "In view of the foregoing, I have been directed to report that the Commission, working with its counsel, will explore avenues toward formulation of a program, within the framework of law, designed to prevent enforced integration of the races in the public schools of Virginia."

When the feeling of the people at large is so clear and strong, it cannot be disregarded.[1] This Court assumes a heavy burden if it attempts to disestablish overnight a system that has existed for 90 years with its approval and demands a new pattern completely repugnant to most of the people. Any requirement of immediate integration as a result of this shift of principle will bring lasting harm to today's children of both races, ironically those least able to protect themselves.

III.

IMPEDIMENTS TO INTEGRATION

The Appellants would have the Court believe that there are no reasons why integration may not be directed overnight. They speak of "documented experience with desegregation" that indicates that "gradualism . . . may make it more difficult" (Brief, p. 17). They quote from experience in States even north of those generally known as the Border States or from reactions in graduate schools in the universities of the South.[2]

But none of the "experience" that they cite has any relevance to the present issue. The primary and secondary schools to which they refer are in localities remote from the

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[1] We quote again the words of the Ford Foundation study:

> "It is axiomatic that separate schools can be merged only with great difficulty, if at all, when a great majority of the citizens who support them are actively opposed to the move." Ashmore, *The Negro and the Schools* (Chapel Hill 1954) 81-2.

[2] Even such experience makes clear the need for substantial time. Moves toward desegregation began in Cincinnati about 1940 but a decade and a half later:

> "The integration of public schools is not complete even today." Williams and Ryan, *Schools in Transition* (Chapel Hill 1954) 36-7.

Southern States; in the Southern States the practice of segregation has existed with legal sanction ever since the beginning, and there the greatest concentration of the Negro population still exists. Experts may assert that in New Jersey "basic policies and prevailing practices have been essentially similar to those of the Southern States;"[3] Virginia is fully conscious, as the Court must be, that the problems that we face are gargantuan in comparison with those of New Jersey.

Virginia is confronted with many problems. They are problems arising primarily from the determined unwillingness of its people to support, financially and otherwise, a system of integrated public schools. This position is not taken out of racial dislike. There are many practical reasons.

1. *Level of Educational Attainment:* More than 31,000 Virginia school children in the eighth grade annually are given a standard silent reading test. These are the results most recently tabulated for Virginia's cities:

Class Standing	*"Reading Age"*
WHITE	
Highest 25%	18 1/6 years
Middle 50%	13 1/2 years
Lowest 25%	12 years
NEGRO	
Highest 25%	11 5/6 years
Middle 50%	10 7/12 years
Lowest 25%	9 1/3 years

Thus it was made clear that the lowest quarter of the white students was further advanced than the highest quarter of the Negroes.

This result was not unexpected. Similar answers were obtained from the standard psychological examination of

[3] *Id.* at p. 121.

the American Council on Education, generally designated as IQ tests, given to all high school seniors. These were the scores obtained in the Virginia cities:

Class Standing	*Score*
WHITE	
Highest 25%	103.2
Middle 50%	89.9
Lowest 25%	71.2
NEGRO	
Highest 25%	63.9
Middle 50%	50.3
Lowest 25%	34.0

It is true, though not particularly helpful, that the results for rural areas were slightly closer; the gap remained wide. How can the gap be bridged? Is it practicable to mix everyone together and have one teacher instructing children whose levels of attainment are as diverse as reading ages of 18 and 9? Will it benefit the children in the schools for this to be required?

This is a very practical measure of difficulties to be encountered in ending segregation.

2. *Standards of Health:* Statistics for Virginia as a whole indicate that tuberculosis is almost twice as prevalent among the Negroes as among the whites. Similarly, in Virginia, where Negroes constitute 22% of the population, 78% of the cases of syphilis and 83% of the cases of gonorrhea occur among Negroes. No white parent will welcome Negro students into the white schools when to do so would increase his child's exposure to such contagious diseases.

3. *Standards of Morality:* In Virginia, one white child out of every 50 is illegitimate; one Negro child out of every 5 is illegitimate. The background of parental morality indicated by these figures dismays Virginia's white parents.

4. *Source of Teachers:* Virginia employs as many Negro teachers as do all the unsegregated States (R. 440, 450, 494). But Virginia is not prepared to place Negro teachers in charge of white pupils. The need for additional teachers is urgent; the source is not immediately apparent.

It does no good to discuss the cause of the conditions that we have mentioned; cause is irrelevant when the facts exist and must therefore be taken into account. These facts present very practical justification for the position taken by Virginia that integration under present conditions is impossible at this time.

IV.

THE POSITION OF THE UNITED STATES

The decision of this Court of May 17, 1954, was based neither on abstract reasoning nor on prior decisions; to the contrary, it overruled prior decisions on the basis of psychological evidence. The turning phrase is the asserted "feeling of inferiority . . . that may affect [Negro] hearts and minds in a way unlikely ever to be undone."[4]

The Attorney General of the United States welcomed a decision on this ground and he now proposes that it be put into effect on a relatively moderate basis. But he overlooks, as the Court should not, the fact that other psychology is involved here in addition to that of the Negro. That is the psychology of the whites; it must be taken fully into account in the final decree.

This principal criterion for decision was made clear by this Court:

> "Today, education is perhaps the most important function of state and local governments. . . . It is the very foundation of good citizenship. . . . In these days, it is doubtful that any child may reasonably be expected

[4] 347 U. S. at 494.

> to succeed in life if he is denied the opportunity of an education."[5]

Accordingly, the aim of the final decree in this case must be to preserve and protect the public schools.

The public schools cannot be preserved and protected if the psychology of the whites is disregarded.[6] Yet the Attorney General proposes, apparently, that it be disregarded completely. He would demand a program of desegregation even if the program resulted in the elimination of the public schools.

Were the Attorney General to modify his proposals so as to accept the aim of protection of the school system, we should not present strong objections to the general terms of his program. What will it benefit the Negro to win the decision and close the schools? The Attorney General must recognize that law rests on the consent of those subject to the law. The Court must not forget that practical education is more important than the imponderable of integration.

Accordingly, we propose that a decree be entered here directing that the Court below take further evidence to determine a program for effective enforcement of the decision of May 17, 1954, in such a manner and to such an extent as will not jeopardize the effectiveness of Virginia's system of public schools.

V.

CONCLUSION

Neither Prince Edward County nor Virginia come before this Court convicted of a crime; we recognize neither a

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[5] 347 U. S. at 493.

[6] The public school system has proven that it is well worth protection and preservation. Since 1920 illiteracy among the school population has declined from 4.2% to 0.27%; by races, the decline for whites has been from 2.7% to 0.18%, for Negroes from 7.2% to 0.52%.

sense of guilt nor a feeling of inferiority. We feel a sense of bewilderment that traditions and systems that have operated with judicial approval since 1870, and, in fact, since 1619, can be so readily swept away.

In looking at the days ahead, Virginia thinks first of her children. Education is important and it must be preserved. When this Court swept away the traditions and systems of many generations, it did not change the way that Virginians think and believe. How Virginians think and believe is an important factor in determining the future course of Virginia schools. To require integration in Virginia's public schools now will result only in their collapse. As the years go by, conditions may change; if education is to prosper in Virginia, this Court must permit a now indeterminable period to elapse before requiring integration of the races in Virginia's public schools.

Dated April 8, 1955.

Respectfully submitted,

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APPENDIX

Report of the Commission on Public Education

COMMONWEALTH OF VIRGINIA

COMMISSION ON PUBLIC EDUCATION

January 19, 1955.

Honorable Thomas B. Stanley, Governor of Virginia:
Richmond, Virginia

On August 30, 1954, Your Excellency appointed the undersigned to a commission charged with the duty of examining the effect on this Commonwealth of the decision of the Supreme Court of the United States in the school segregation cases handed down on May 17, 1954, and of making such recommendations, based upon its examination, as they deemed proper.

Your Commission met on September 13, 1954, and elected the undersigned chairman and Harry B. Davis vice-chairman. An executive committee was provided for, consisting of the two named officers and nine other members of the Commission.

Immediately following the appointment of the Commission, its members began to receive a large volume of mail from the citizens of Virginia. In addition, a great many citizens talked with members of the Commission and stated their views on the question of integration, requesting that they be transmitted to the proper authorities.

The Commission held a public hearing on November 15, 1954, in the City of Richmond. The widest possible publicity was given to this hearing and all citizens and groups were invited to attend or send representatives to express their views on the question of what course Virginia should follow in the light of the decision of the Supreme Court of the United States in the school segregation cases. The hearing was held in the Mosque in order to accommodate the more than two thousand persons who attended. It began at 10:00 A. M. and extended late into the night. Opportunity

was given everyone who had indicated a desire to do so, to express his opinion.

As the record of the public hearing shows, the great majority of those appearing there expressed opposition to integration and requested those in authority to afford them relief from the effects which they anticipated would result therefrom. Spokesmen for the Negro race and various Negro organizations, and a lesser number of white persons, urged immediate integration; in some instances conflicting viewpoints developed among members of the same organization.

The hearing was well attended, orderly, and apparently representative of the views of the people of the entire State, and it is presently the view of the Commission that further public hearings would result only in cumulative testimony, rather than fresh viewpoints.

The testimony at the hearing brought into sharp focus the nature and intensity of the feeling as to the effect that integration would have on the public school system. Not only did the majority of persons speaking at the hearing feel that integration would lead to the abolition or destruction of the public school system, but some groups indicated, through their spokesmen, that they *preferred* to see the public school system abandoned if the only alternative was integration.

It is noteworthy that fifty-five counties, located in various parts of the State, through resolutions adopted by their representative governing bodies, have expressed opposition to integration in the public schools and that of the fifty-five counties only twenty-one have over fifty percent Negro population. A number of school boards have expressed opposition to integration of the races in the schools, as have many non-governmental organizations and associations of our citizens. Included in the latter group are large and

representative Statewide organizations. In addition, the sentiment of a large number of individuals has been expressed through the medium of petitions opposing integration.

The public hearing held in Richmond, the content of many communications to Your Excellency and to the Commission, conversations with the people of this Commonwealth, and the actions taken by a majority of the boards of supervisors of the counties, and by school boards and other organizations, have convinced the Commission that the overwhelming majority of the people of Virginia are not only opposed to integration of the white and negro children of this State, but are firmly convinced that integration of the public school system without due regard to the convictions of the majority of the people and without regard to local conditions, would virtually destroy or seriously impair the public school system in many sections in Virginia.

The welfare of the public school system is based on the support of the people who provide the revenues which maintain it, and unless that system is operated in accordance with the convictions of the people who pay the costs, it cannot survive; and this is particularly true in Virginia where a large percentage of the cost of public education is dependent upon local revenues.

In view of the foregoing, I have been directed to report that the Commission, working with its counsel, will explore avenues toward formulation of a program, within the framework of law, designed to prevent enforced integration of the races in the public schools of Virginia.

Respectfully submitted,

GARLAND GRAY
Chairman

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IN THE

Supreme Court of the United States

October Term, 1954

No. 4

SPOTTSWOOD THOMAS BOLLING, ET AL., *Petitioners*,

v.

C. MELVIN SHARPE, ET AL., *Respondents*.

BRIEF FOR PETITIONERS ON FURTHER REARGUMENT

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BRIEF FOR PETITIONERS ON FURTHER REARGUMENT

On May 17th last, this Court disposed of the basic constitutional question presented by this case and companion cases by construing the due process clause of the Fifth Amendment and the equal protection clause of the Fourteenth Amendment as stripping federal and state governments of the power to require, authorize or permit the enforcement of racial segregation in the public schools. The Court said, moreover, that the formulation of decrees was made difficult "because these are class actions, because of the wide applicability of this decision and because of the great variety of local conditions ... We have now an-

nounced that [Segregation in public education] is a denial of the equal protection of the laws. In order that we may have the full assistance of the parties in formulating decrees, the cases will be restored to the docket, and the parties are requested to present further argument on Questions 4 and 5 previously propounded by the Court for the reargument this Term. The Attorney General of the United States is again invited to participate. The Attorneys General of the states requiring or permitting segregation in public education will also be permitted to appear as amici curiae upon request to do so by September 15, 1954, and submission on briefs by October 1, 1954."

Subsequently the time for filing of briefs for all parties was set for November 15, and these cases set down for re-argument December 6th.

QUESTIONS

Questions 4 and 5 left undecided, and now the subject of the discussion in this brief, follow:

4. Assuming it is decided that segregation in public schools violates the Fourteenth Amendment,

   (a) would a decree necessarily follow providing that, within the limits set by normal geographic school districting, Negro children should forthwith be admitted to schools of their choice, or

   (b) may this Court, in the exercise of its equity powers, permit an effective gradual adjustment to be brought about from existing segregated systems to a system not based on color distinctions?

5. On the assumption on which questions 4(a) and (b) are based, and assuming further that this Court will exercise its equity powers to the end described in question 4(b),

(a) should this Court formulate detailed decrees in these cases;

(b) if so, what specific issues should the decrees reach;

(c) should this Court appoint a special master to hear evidence with a view to recommending specific terms for such decrees;

(d) should this Court remand to the courts of first instance with directions to frame decrees in these cases, and if so, what general directions should the decrees of the courts of first instance follow in arriving at the specific terms of more detailed decrees?

PRELIMINARY STATEMENT

Since May 17th the School Board of the District of Columbia without awaiting a decree from this Court, has proceeded with implementation of a plan to desegregate the public school system of the District of Columbia. This so-called "Corning plan" has received wide publicity and has been referred to by many as a model plan for the desegregation of public school education. Since this Court is undoubtedly interested in what has taken place in the District of Columbia since its May 17th decision, we feel constrained to point out in some detail the development, modification, and operation of this plan. We likewise believe it will be of aid to the Court in its consideration of the answers to questions 4 and 5 to acquaint the Court with the framework within which this plan has been developed. In addition it also appears important to us that we give the Court our appraisal of this plan and its implementation. Under any thoughtful consideration of what has happened here, due deliberation must be given to the fact that this is the Nation's capital. It should also be borne in mind that the decision of May 17th is in line with the policy of the Federal Government

These factors shed additional light on the events which have occurred since that decision. Any critical examination of what has taken place in the District of Columbia must be made in full awareness of the strong position taken by the President of the United States in not only urging immediate integration in the public schools of the District of Columbia but in also expressing the hope that the manner in which this transition from a segregated public school system to an integrated one might serve as a model for the rest of the country. The Commissioners of the District of Columbia took vigorous action in support of this position. The Corporation Counsel of the District of Columbia issued a clear cut opinion authorizing immediate action in the implementation of this position. The Board of Education then adopted a forthright and unequivocal policy calling for immediate integration. All of these actions occurred within the astonishingly short period of eight (8) days. It would also appear to us to be of some assistance to the Court to be advised that wherever unseasonable delay manifested itself in the plan proposed or in the steps taken in carrying out the plan that some one or more of these public officials or agencies insisted upon elimination of such delay and thus facilitated prompt action. It is in the light of this background that we wish to discuss with the Court the "Corning plan" and the steps taken thereunder in the District of Columbia.

DEVELOPMENT AND OPERATION OF THE CORNING PLAN

On December 17, 1952 the Board of Education directed Dr. Hobart Corning, the Superintendent, to formulate plans and to hold hearings on the integration of the then existing dual school system in the District of Columbia in the event that the Supreme Court should declare the dual school system to be unconstitutional. (Minutes of the Seventh (stated) meeting of the Board of Education, 1952-1953, held on December 17, 1952, p. 34.) The Superintendent

pursuant to this directive invited suggestions with regard to desegregation from interested persons and community organizations. Numerous responses resulted from these invitations. These responses were analyzed and tabulated, and reported upon by Dr. Corning to the Board. The Board invited organizations and citizens to appear and submit further suggestions. The materials submitted were referred to the Superintendent for the attention of his staff, looking forward to the submission of a plan of desegregation by the Superintendent.

The Superintendent advised the Board at its meeting on December 16, 1953, that he planned "to set up a series of meetings in the general field of inter-cultural relationships . . . " (Superintendent's Circular No. 79, Appendix B, p. 33.)

From December, 1953 until May 1954, a program of inter-cultural education was carried on among Dr. Corning's staff and to a limited extent among the teaching personnel. The superintendent stated that the purpose of his activity was not to deal "with segregation or integration as such or with the advantages and disadvantages of either system, but that we are dealing rather with the problem of developing desirable human understandings and relationships as we live together and work together for the education of all the children—no matter under what general plan the schools are organized." (*Ibid.*, p. 34.)

On the day this Court announced its opinion in this case, Superintendent Corning made a statement to the press that neither he nor the Board could do anything about desegregation until the Court had handed down its final decree. However, the next day, May 18, 1954, the District authorities decided not to wait for the re-arguments on the method and timing of integration nor for this Court's final decree. On that day the members of the Board of Education and Superintendent Corning, along with the Corporation Counsel for the District of Columbia, The Honorable Vernon West, met with the Commissioners of the

District of Columbia. The Corporation Counsel advised them that the decision of this Court made Acts requiring separation of the races in public education unconstitutional; that the Board could determine the mechanics and time of integration; and that there was nothing to prevent the school authorities from desegregating as soon as they deemed advisable. At this meeting Commissioner Samuel Spencer disclosed that President Eisenhower had expressed the hope that the District would become a "model" for the nation in school integration. (Washington Post-Times Herald, May 19, 1954, p. 1 col. 7, p. 6 col. 3.)

The Board at its next regular meeting, May 19, 1954, decided to have a call meeting on May 25, 1954 for the purpose of hearing the Superintendent's report on the matter of desegregation of the public schools. A resolution was presented to the Board that "the Board enunciate in advance of the consideration of any plan proposed by the Superintendent, a clear and unequivocal statement of principles which shall govern in the adoption and execution of the Superintendent's proposed plan", and that the President appoint a special committee for the purpose of drafting such a set of principles for presentation to the Board at the May 25 meeting.

During the discussion of the resolution, the Superintendent strenuously objected to this proposal saying, ". . . he is wholly in accord with the establishment by the Board of an unequivocal set of principles. He stated further, however, that he has been working for weeks in the preparation of a set of principles to recommend to the Board and that he believed his report would be almost useless if the Board, prior to receiving his report, established a set of principles. He stated that his report is not a detailed administrative report except insofar as it illustrates how the principles would operate. He stated further that he was prepared to present to the Board at its special meeting on May 25, 1954, a specific set of principles with the firm recommendation that they be adopted as an

unequivocal set of principles to govern the administrative procedures to follow. He stated that he had no objection to another set of principles being suggested, but that it was his thought that inasmuch as work had been put upon this matter of principles, he felt the Board should first give consideration to his report which the Board could amend, revise or eliminate."

". . . The Superintendent stated that whatever principles are adopted and whatever administrative devices are applied will require a great deal of time beyond the establishment of principles."

The resolution was adopted by the Board and the committee was appointed. (Minutes of the Twelfth (stated) Meeting of the Board of Education, 1953-54, May 19, 1954.)

At its May 25th meeting the Board adopted the following policy:

> "In the light of the decision of the Supreme Court of the United States in Bolling v. Sharpe, the Board of Education of the District of Columbia, believing it to be in the best interest of all citizens of the community of Washington, and necessary to the effective administration of an integrated system within the public schools, hereby adopts the following declaration of policy:
>
> 1. Appointments, transfers, preferments, promotions, ratings, or any other matters respecting the officers and employees of the Board shall be predicated solely upon merit and not upon race or color.
>
> 2. No pupil of the public schools shall be favored or discriminated against in any matter or in any manner respecting his or her relationship to the schools of the District of Columbia by reason of race or color.
>
> 3. Attendance of pupils residing within school boundaries, hereafter to be established, shall not be permitted at schools located beyond such boundaries, except for the most necessitous reasons or for the public convenience, and in no event

for reasons related to the racial character of the school within the boundaries in which the pupil resides.

4. The Board believes that no record should be kept or maintained in respect to any pupil not enrolled in a public school on or prior to June 17, 1954, or in respect to any officer or employee not employed within the system on or prior to that date in which information is solicited or recorded relating to the color or race of any such person.

5. That the maximum efficient use shall be made of all physical facilities without regard to race or color.

In support of the foregoing principles, which are believed to be cardinal, the Board will not hesitate to use its full powers. It is pledged to a complete and wholehearted pursuit of these objectives.

We affirm our intention to secure the right of every child, within his own capacity to the full, equal and impartial use of all school facilities, and the right of all qualified teachers to teach where needed within the school system. And, finally, we ask the aid, cooperation and good-will of all citizens and the help of the Almighty in holding to our stated purposes." (Minutes of the 13th (Special) Meeting of the Board of Education, 1953-1954, held May 25, 1954, and Recessed Session held June 2, 1954, pp. A-8-9, App. pp. 1-15.)

After adopting this declaration of principles, the Superintendent was called upon to present his plan for integration. The "Corning Plan" was then presented by the Superintendent.

This plan was prefaced by the following statement:

1. *Complete desegregation of all schools is to be accomplished with least possible delay.*

Desegregation by grades or by levels would delay the process and would create administrative problems arising from confusion and inconsistencies.

2. *New boundaries are to be established for each school.*

Definite boundaries will be established for each school to make the optimum use of the school by the pupils living in its immediate area.

In sections of the city where schools are located very close to each other it will be impossible to set up separate boundaries for each school. In such instances, therefore, the boundaries will be for groups of schools rather than for individual schools.

When the new boundaries have been established and the plan is in operation, adherence to the boundary limitations must be definite and without exception.

This does not mean, however, that there will be any change in the present practice of adjustments of any school boundaries by the Superintendent wherever changes in school population make such action necessary. These boundary readjustments during the period of transition to a desegregated system will probably be more frequent than they are at present.

3. *Appointments and promotions of all school personnel are to be made on a merit system only and assignment will be in accord with the needs of the service.*

The tenure rights of individuals as to salary level and rank will be maintained.

The duties of some officers will necessarily be changed.

4. *The transition to a desegregated system is to be accomplished by natural and orderly means.*

Artificial and immediate reassignments of large numbers of pupils, teachers, and officers would be disruptive and will be avoided." (*Ibid.*, p. A. 16)

The report next proceeds with a consideration of the distribution of pupils and of school boundaries. The following

criteria are provided for governing the distribution of pupils:

"1. the optimum use of all school buildings, and

2. the optimum accessibility of school buildings to the residences of pupils.

These criteria according to the plan necessarily require the establishment of definite zones to be served by each school or group of schools with the exception of the teachers colleges and the vocational and technical high schools which are specialized in nature and will continue to be city-wide in their services." (*Ibid.*, p. A. 17)

This plan provides for an option for students presently enrolled in the District of Columbia system at any level to remain at the school until graduation from that level in order to avoid immediate displacement of large numbers of pupils. It provides the following procedures for carrying this out:

"1. Fixed zones are to be established for each elementary, junior high and senior high school to insure balanced use of school facilities.

2. All pupils new to the school system or to a particular school level will be assigned to the schools designated to serve the zones in which they live.

3. All pupils at present enrolled in a given school may remain until graduation provided the school is not overcrowded and provided the priority rights of pupils within the new boundaries of the school are not denied. If they prefer they may transfer to the school serving the zone in which they live. Elementary school pupils who change residence will be transferred to the school assigned to the area of the new residence.

4. Transfers from one school to another will be required when necessary to relieve overcrowded conditions." (*Ibid.*, p. A. 17-18.)

In keeping with the directions of the Board of Education the plan next set forth a proposed schedule (*Ibid.*, pp. A. 21-25.) This schedule provided for the completion of the drawing of new boundaries for the public schools by September, 1954. (*Ibid.*, p. A. 21.) It provided for limited transfers of elementary and junior high school pupils solely to relieve overcrowding by September, 1954. (*Ibid.*, p. A. 21-22.) It further provided for a beginning of a merger of the McKinley and Armstrong technical high schools at the same time. (*Ibid.*, p. A. 22.) In addition, provision was made for students of all races to attend the Miner and Wilson Teacher Colleges by September, 1954. (*Ibid.*, p. A. 22-23.)

The plan next enumerated a series of administrative actions which needed to be taken which caused the Superintendent to feel that he could make no more progress toward desegregation in the public schools by September, 1954 than indicated in the paragraph above. He also indicated that the need for legislative changes supported this delay. (*Ibid.*, p. A. 22.)

The plan continues with these observations:

> "If the Board approves the Superintendent's plan and if there are no such setbacks as the failure to secure such legislative changes as the Corporation Counsel deems necessary or to secure funds that may be necessary to accomplish the physical changes in schools and in the redistribution of classroom equipment and supplies, the Superintendent feels that he can complete the changeover to a desegregated system by September, 1955.
>
> "It is the belief of the Superintendent that he cannot in September go beyond the steps outlined in this report because of the lack of sufficient time before the close of school in June as the presence of pupils, teachers, and officers is essential to the carrying out of these plans. The official school calendar specifies June 17, as the last day for pupils; June 18, as the last day for teachers; and July 1 through August 31, as the summer vacation period for field officers. The field

officers are, of course, subject to call during this vacation period if their services are needed." (*Ibid.*, p. A. 23-24.)

As regards personnel, the Superintendent set no dates, but stated that persons presently employed would not be moved immediately, and that new personnel would be assigned in accordance with the needs of the service. Staff personnel would continue to exercise their current functions. (*Ibid.*, pp. A. 19-21.)

The Board heard the Superintendent read this report and immediately recessed until June 2. On June 2 the Board met and discussed the Superintendent's report—that is the "Corning Plan" as described above (*Ibid.*, pp. A. 35-61). The Superintendent then submitted a statement to the Board in which he sought to justify the validity of the "option" plan and to further support his position that it was administratively impossible to put his plan into effect in September, 1954, except for the emergency transfers indicated above. In this statement the Superintendent conceded that he could establish new school boundaries by July 1, 1954; but, he stressed vigorously his viewpoint that it was administratively impossible to make any significant assignment of pupils by September, 1954. In this statement it was pointed out that emergency transfers referred to would provide for the transfer of about 2,700 Negro pupils into the previously all-white elementary and junior high schools. (*Ibid.*, pp. A. 62-66.)

The Superintendent's report of May 25 was accepted and filed and Dr. Corning was instructed to complete the designation of school boundaries and present maps to the Board on July 1 and to submit to the Board on June 23 a specific schedule covering the steps in desegregation. (*Ibid.*, p. A. 74.)

In the Board Meeting of June 23, 1954, Superintendent Corning outlined the steps in the desegregation program which had been taken and were to be accomplished,

with their respective dates. (*Ibid.*, A. 41-46.) The schedule has been carried out to date except in instances and manners as hereinafter noted:

June 8	Temporary reorganization of the two Boards of Examiners into one Board under the direct chairmanship of the Superintendent.
June 10, 11, 12	Teacher examinations for elementary, junior high, and vocational high schools on a completely integrated basis.
June 11	Notices sent to all high school principals announcing that both Miner and Wilson Teachers Colleges are receiving applications for admission in September from any qualified person, regardless of race.
June 11	Instructions issued to Heads of Departments of Military Science and Tactics to prepare and submit suggested plan for integration of cadet program for 1954-55 school year.
June 14	Meeting of First Assistant and Associate Superintendents concerned, Directors of Health, Physical Education, Athletics, and Safety, and Directors of Athletics to discuss all sports programs for 1954-55 school year. Directors of Athletics to report back on June 24 with suggested schedules.
June 14	First field officer examination announced on a city-wide basis (five such announcements issued to date).
June 15	Completion of tabulation and listing of data from registration cards for approximately 100,000 pupils.
June 17	Preliminary steps completed to effect transfers of pupils in elementary, junior high, and senior high schools listed in Superintendent's report of May 25 (Proposed Schedule, pp. 7-8)
June 23	Revised legislative language submitted to the Board covering necessary amendments to existing law because of Supreme Court decision—

Concerning First Assistant Superintendent
Concerning Chief Examiners
Concerning Board of Examiners
Concerning School Censuses

July 1	Superintendent to submit to Board maps and descriptive data to show new boundary lines for all elementary, junior high and senior high schools.
July 1	All necessary data concerning new boundaries to be furnished school principals and press to insure publicity reaching all school personnel and patrons.
	Superintendent to submit recommendations for merging of all lists of persons eligible for appointment to all teacherships on all levels.
September 1	Use of new boundaries on all levels for all pupils new to the public schools including kindergarten and first grade pupils entering the public schools for the first time.
	(12,000 children affected. Change moved up by three months and put into operation.)
September 13	Evening schools to open for operation on an integrated basis.
September 13	Transfers of selected Division 2 elementary school pupils who, because of present boundaries, are required to travel excessive distances where there are present Division 1 schools near their homes. This is possible as it involves a limited number of pupils and in no instance will require reorganization in a school receiving pupils or the transfer of furniture or equipment.
	(Approximately three hundred transferred.)
	(Pupil changes and transfers were made in the elementary schools, junior high schools, senior high schools, teachers colleges and evening schools. Estimated number of pupils transferred was 2903.)
September 13	Completion of building organizations including the transfer of teachers in some schools.
September 13	Completion of transfer of furniture and equipment and textbooks and classroom supplies between schools affected by pupil transfers.
October 1-15	Explain to all pupils the options provided either for remaining in present schools or transferring to new schools. (Prior to this date, this phase was accelerated.)
	Hold meetings for parents of all children who are qualified to request options to explain the choices

although no assurance can at that time be given whether the options can be approved for February 1 or for a later date.
(Meetings of parents not held as provided for.)

Written statements to be filed not later than November 11 confirming all options requested. Sixth, ninth and twelfth grade pupils not to be transferred.

(Transfers not made in the sixth, ninth and twelfth grade pupils, except in instances showing hardships. Senior High, 400 Negroes transferred to white school. Junior High, 525 Negroes transferred to white school. Elementary, 900 Negroes transferred to white school.)

The Superintendent repeats his desire to take such additional progressive steps as are consistent with the welfare of the children. He will, therefore, examine and tabulate all the written options that are filed to determine the numbers of pupils residing outside the new boundaries who wish to remain in their present schools and the numbers of those who wish to transfer to the schools serving their residence areas. On the basis of these findings he will then make such changed pupil assignments as are found feasible without forced transfers at the beginning of the new semester in February.

(Transfers being made with changes of address and in accord with zoning for new pupils)

On September 22, 1954, Superintendent Corning summarized the progress made in desegregating the public schools. He reported that the following things had been accomplished: (1) Schools reorganized; (2) Teachers' eligible register merged and appointments made therefrom; (3) Pupils transferred in accordance with the administration's plans; (4) Furniture, etc. moved; (5) Faculties in more than one-fifth of the schools rendered bi-racial; (6) Committee set up to consider "hardship cases," received about 700 requests for relief, processed about 500, granted about 60%, rejected about 10 percent and placed the remaining 30% under the "option" category

to be disposed of later; (7) new kindergartners, new first graders and all pupils attending Washington schools for the first time assigned on the basis of the new boundaries; (8) more than 3000 elementary and junior high school pupils transferred to new schools to relieve over-crowding; (9) about 100 children transferred to avoid necessity of travelling long distances; (10) Youth Council Centers established at Thomson and Walker-Jones Schools [student bodies bi-racial not faculties]; (11) 20 mentally retarded children and 3 special teachers assigned to the Military Road School [actually only 8 pupils—3 Negro and 5 white—and 3 teachers—2 Negro and 1 white—were assigned here]; (12) merging of McKinley and Armstrong started with a transfer of several hundred (346) children to McKinley; (13) Miner and Wilson Teachers Colleges opened to all qualified applicants [no whites at Miner, 32 Negroes at Wilson]; (14) all evening schools opened on an integrated basis; (15) on September 20 about 460 applications for transfers on the basis of options filed by senior high school pupils [467 eventually granted]; (16) on September 27, 560 applications filed by junior high school pupils [488 eventually granted]; (17) on September 27, about 2400 applications filed by elementary school pupils [none granted, at first because a strike against desegregation existed in the secondary schools, later about 900 transfers in the secondary schools effected, the remainder not acted upon.] (Minutes of the Fourth (Stated) Meeting of the Board of Education, 1954-55, September 22, 1954, pp. A. 18-22. Matters in brackets obtained by us from the District of Columbia School Officials.)

We turn now to an appraisal of the "Corning Plan", and our answers to Questions Four and Five propounded by this Court.

ARGUMENT

I

In Answer to Question 4a This Court Must, and in Answer to Question 4b This Court Should Issue a Decree Ordering Forthwith Desegregation of the Public School System of the District of Columbia.

Again stated, Question 4 is:

4. Assuming it is decided that segregation in public schools violates the Fourteenth Amendment,

(a) would a decree necessarily follow providing that, within the limits set by normal geographic school districting, Negro children should forthwith be admitted to schools of their choice, or

(b) may this Court, in the exercise of its equity powers, permit an effective gradual adjustment to be brought about from existing segregated systems to a system not based on color distinctions?

With respect to these questions petitioners reaffirm the views set forth in their brief on reargument heretofore submitted[1] wherein it is urged that this Court should by its decree direct respondents forthwith to admit petitioners to schools of their choice within the limits of normal geographic school districting. This Court, having decided that segregation in public schools is violative of the Fifth Amendment should decree that respondents, lacking the constitutional power to assign pupils to public schools on the basis of race, immediately cease and desist using race as a factor in making such assignments.

Supporting of that position are the cases decided by this Court enunciating the proposition that the rights here involved are personal and present. *Sweatt* v. *Painter*, 339 U.S. 629, 635; *Sipuel* v. *Board of Regents*, 332 U.S. 631, 633; *Missouri ex rel. Gaines* v. *Canada*, 350 U.S. 337, 352; *Brown* v. *Board of Education*, 347 U.S. 483; *Bolling* v. *Sharpe*, 347

[1] Brief for Petitioners on Reargument No. 8, October Term, 1953, pp. 89-94.

U.S. 497. The present, personal rights of children who are growing through their formative years necessitate forthwith vindication if they are not to be irretrievably lost.

Petitioners also adopt the arguments urged in the joint brief filed by the pupils and parents in the State cases. Further, petitioners reaffirm the position taken in their brief on reargument hereinbefore mentioned which is in essence that no power exists in this Court to postpone the enjoyment by petitioners of rights constitutionally protected, especially where, as here, the unconstitutional conduct of respondents is causing injury to the most important secular claims that can be put forward by children, the claim to their full measure of the opportunity to learn and grow, and to be treated as entire citizens of the society into which they have been born. In the words of the Delaware Court:

> ". . . To require the plaintiffs to wait another year under present conditions would be in effect partially to deny them that to which we have held they are entitled." *Gebhart* v. *Belton*, 91 A. (2d) 137, 149.

Moreover, even should this Court conclude that its equity powers do permit an ending of a segregated school system to be accomplished by means of an *effective gradual adjustment*, assay of the factors involved makes it clear that in the District of Columbia it would be both unnecessary and unwise to exercise such powers. The factual situation in the District of Columbia makes a gradual decree unnecessary. Racial segregation has disappeared from virtually every phase of life in the District where Negroes and whites live side by side, work together, dine together and recreate in the same places and in general live their lives without racial distinction, save in the public schools. As has been heretofore indicated, since May 17, 1954 the great majority of individuals and organizations in the District have worked and are working with great zeal to achieve the implementation of this Court's decision without awaiting the decree of this Court. In this atmosphere it is sub-

mitted that it would be an unwise exercise of equity powers were this Court to do other than grant a forthwith decree.

In specific implementation of their answer to question four (b) and as an aid to the Court in its consideration thereof, petitioners would like to call to the attention of the Court the experience in the District of Columbia with the *Corning Plan* for desegregation of the District school system.

This Court has questioned whether it might permit a gradual adjustment from a segregated school system to one not based upon race. We have already indicated that in our opinion no power exists in the Court to postpone relief and we address ourselves to that question on the assumption that the Court finds that such power does exist. Even if this Court finds that such powers exist, we submit, that the power should not be exercised in this case. It needs no citation of authority to establish that the defendant in equity who asks the chancellor to go slowly in upholding the adjudicated vital rights of children accruing to them under the Constitution must make out an affirmative case of crushing conviction to sustain his plea for delay.

The experience in the District of Columbia with the Corning Plan substantiates the empirical studies of actual cases of desegregation of public schools and other social institutions, and rebuts the possibility that an affirmative case can be made out to prove that there is any compelling and valid justification which would sustain the delay implicit in the plan.[2]

At the very outset we desire to make our position clear that we do not agree with counsel for the respondents in

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[2] Ashmore, Harry S., *The Negro and the Schools*, Chapel Hill: University of North Carolina Press, 1954;

Clark, Kenneth B., "Desegration: An Appraisal of the Evidence", *The Journal of Social Issues*, 1953, 9, No. 4, 1-77;

"Next Steps in Racial Desegration in Education", *Journal of Negro Education*, Summer 1954, 23, No. 3, The Yearbook Number 23, 1-399.

their publicized position that desegregation of the public schools in the District of Columbia has been accomplished in compliance with the pronouncement of this Court in its decision of May 17th. It is our appraisal of the plan put in operation in the District of Columbia that respondents have advanced on the assumption that this Court has accepted the theory of an effective gradual adjustment of the transition from a segregated system to a system not based on color distinctions and they have discounted the propriety of a forthwith disposal of this matter upon its merits, and have launched upon this gradual plan which is replete with errors and pitfalls. There is a basic inconsistency between the protestations of immediacy by the respondents and the gradualism contained in the program and demonstrated in its operation.

The inequities and partial or complete denial of constitutional rights which are necessarily inherent in any plan providing for postponement of constitutional rights are highlighted by a discussion and critique of the "Corning Plan" as administered by the District of Columbia which plan contains elements of both forthwith desegregation and gradualism. Here the gradualist element has caused not only a denial of present constitutional rights to some pupils, but has also been the genesis of many administrative difficulties in the past. It presages many more difficulties for the future, most all of which would be avoided by the adoption of a forthwith plan.

The principal areas of objections to the Corning Plan are (1) the delay in completely desegregating the public school system and (2) the insertion of a plan of student options designed to defeat effective desegregation as contemplated by the May 17th decision and by the policy declaration of the Board.

(1) An examination of proposals and statements of Superintendent Corning indicates that administratively he was of the opinion that the only desegregation which could take place in the District by September 1954, was the lim-

ited desegregation involved in relieving overcrowding; the merging of Armstrong and McKinley; and the opening of Wilson and Miner Teachers Colleges without regards to race. As a matter of fact, the Superintendent stated that he could not even draw boundary lines before September 1954. But when the Board took its position and told Dr. Corning to act forthwith, the Superintendent found that he could draw the boundary lines by July 1, 1954, and could partially desegregate in all levels by September, 1954, which he accordingly did. That is, the Superintendent took an administrative position of gradualism from which he receded step by step. The experience here in the District of Columbia demonstrated that extended time to desegregate was not necessary, which is in line with the results of studies made in the field of desegregation. [3]

It should be noted in this connection that part of the administrative indecision and delay was repeatedly justified by Dr. Corning on the basis that he was acting in advance of a final decree in this case.

It is the petitioners position that the Corning Plan taken out of its setting and transplanted into another would occasion greater delay, confusion, and extended, if not complete, denial of constitutional rights.

We should like to call the attention of the Court to the repeated statements by the Superintendent of Schools that certain steps in desegregation were necessary because they were educationally sound, not for the purpose of discrediting the Superintendent, but for the purpose of emphasizing to the Court that claims of educational unsoundness as justification for delay and other administrative actions are, to say the least, unreliable.

(2) The provision for an option, which the Superintendent engrafted upon a boundary system, created anticipated

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[3] Clark, Kenneth B., "Desegregation: An Appraisal of the Evidence", *The Journal of Social Issues*, 1953, 9, No. 4, 1-79, 36.

Ashmore, Harry S., *The Negro and the Schools*, Chapel Hill: University of North Carolina Press, 1954, 70-71

confusion and so-called hardship cases. It was difficult for some and impossible for others to understand the operation of this phase of the plan, so that many did not exercise these options because they did not know whether they could, or when they could, exercise them. Some people did not exercise the option to remove their children from the school they had been attending outside the new boundary to the school within the new boundary for fear of the hostility which would be accorded the children in the new school because they would be "bumping" former students. This piecemeal desegregation thus produced the very ills forecast by the experts.[4]

The option provision in effect takes the authority to operate an orderly integrated system from the Superintendent and delegates it to the parents of each child. The option plan has not in fact operated as Dr. Corning has promised that it would. At one place in the plan we find this language:

> "Any child living in the area of School "A" may attend that school if he so desires even though he may now be enrolled in School "B" or in some other school.
>
> "It should be noted that all children living within the boundaries of any given school *will have first priority for attending that school.*"

This on its face seems a fair proviso but the application of the rule, with the required sanction of the Superintend-

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[4] Kutner, Bernard; Wilkins, Carol; Yarrow, Penny Reehman, "Verbal Attitudes and Overt Behavior Involving Racial Prejudice", *The Journal of Abnormal and Social Psychology*, 1952, 47, 649-652;

LaPiere, R. T., "Attitudes vs. Action", *Social Forces*, 1934, 13, 230-237; Saenger, Gerhart and Gilbert, E., "Customer Reactions to the Integration of Negro Sales Personnel", *International Journal of Opinion and Attitude Research*, 1950, 4, 57-76;

Deutsch, Morton and Collins, M. E., Interracial Housing, *A Psychological Study of a Social Experiment*, Minneapolis; University of Minnesota Press, 1951;

Chein, I.; Deutsch, M.; Hyman, H; Johoda, M.—Editors, "Consisteney and Inconsisteney in Intergroup Relations", *The Journal of Social Issues*, 1949, No. 3, 1-63.

ent, is having the following demonstrated result: Child John Doe (Negro) lives now in an area within the boundaries serviced by School A (white) and expresses the desire to go to School A. The Superintendent denies this right on the ground that School A will be overcrowded by that transfer, although the place which John Doe seeks to occupy is being held by one or more children (white) who live outside of the area of School A. In others words, exactly contrary to the wording of the plan, the preference is given to the child outside of the boundaries of the school. Thus attendance with race fundamentally as the controlling factor is being perpetuated. That this is designedly done and that there is no immediate relief in sight is voiced by the Superintendent himself in his announced projected plan:

> "The Superintendent repeats his desire to take such additional progressive steps as are consistent with the welfare of the children. He will, therefore, examine and tabulate all the written options that are filed to determine the numbers of pupils residing outside the new boundaries who wish to remain in their present schools and the numbers of those who wish to transfer to the schools serving their residence areas. On the basis of these findings he will then make such changed pupil assignments as are found feasible without forced transfers at the beginning of the new semester in February."

Our investigation discloses no instance where a single Negro child has been transferred from a school which he has previously attended because of race to a school from which he was previously excluded because of race where to do so would have meant the displacement of a white student. To the contrary, we have come upon instances where white children required by Board rules to attend schools formerly all Negro have been permitted to transfer to schools predominantly white on the alleged ground of "hardship". We respectfully submit that this so-called "hardship" is nothing less than having to attend a public

school within his boundary where his racial group is in the minority. The granting of such transfers by the School Administrator is an admission and acceptance of this as hardship. In addition, the granting of such transfers is assigning students on the basis of race in contravention of this Court's decision of May 17th, and in violation of the expressed policy of the Board of Education stated in the following language:

> "Attendance of pupils residing within school boundaries, hereafter to be established, shall not be permitted at schools located beyond such boundaries, except for the most necessitous reasons or for the public convenience, *and in no event for reasons related to the racial character of the school within the boundaries in which the pupil resides.*" (Minutes of the 13th (Special) meeting of the Board of Education, 1953-1954, held May 25, 1954, p. A 8.)

This is further evidence that this plan not only embraces the principles of gradualism but fosters the denial of effective desegregation.

It appears to us that the Corning Plan as evolved and operated in the District of Columbia tends to nullify the decision of May 17th in two ways: (1) The option features of the plan operate to fasten aspects of the segregated system upon the purportedly desegregated system, and (2) the lack of known standards by which the administrators of the plan are to determine when desegregation is to take effect and why desegregation is to be delayed subject petitioners declared constitutional rights to the uncertain whims and caprice of school authorities, and argues for a forthwith decree, rather than a decree permitting gradualism.

II

If This Court Should Decide to Permit an "Effective Gradual Adjustment" From a Segregated School System to a System Not Based on Color Distinctions, It Should Not Formulate a Detailed Decree But Should Remand This Case to the Court of First Instance With Specific Directions.

In addressing themselves to the problems posed by the several parts of Question 5, petitioners submit that a crucial factor in determining the kind and character of decree which this Court should enter, is the factor of respondents' actions taken and proposed as hereinabove described looking toward the de-segregation of the public schools in the District of Columbia. Based on respondents' own prognosis the outer limit in point of time required for the necessary adjusment of the school system from a segregated system to one not based on race or color is September, 1955. Inasmuch as the bulk of the deficiencies in the proposed plan to which petitioners have called attention are deletions, their adoption will not extend but tend to shorten the time needed for transition. An additional factor which is submitted as a consideration underlying the choice of form of decree is the atmosphere of integration, to which attention has been called, extant in the District of Columbia.

For the reasons enumerated above it would appear crystal clear that it would be injudicious for this Court to undertake the formulation of a detailed decree in this case. Neither is it needful that the decree reach the specifics which have been considered by the Board of Education and implemented by its action. Nor should this Court appoint a special master since all pertinent evidence is already before this Court and is of record for the use both of this Court and the District Court as well.

It is petitioners' position that this Court should issue its mandate directing that the District Court enter a decree enjoining respondents forthwith from imposing distinctions based on race or color in the administration of the public schools of the District of Columbia and directing that each child eligible for public school attendance in the

District of Columbia be admitted to the school of his choice not later than September, 1955, within the limits set by normal geographic school districting.

CONCLUSION

It is respectfully submitted that in light of the decisions of this Court to the effect that respondents lack the constitutional power to use race or color as a basis for the administering of the public schools in the District of Columbia and that it is in violation of Petitioners' rights under the Fifth Amendment to the Constitution of the United States to be excluded from any of such schools on the basis of race or color, this Court should therefore by its mandate require the entry of a forthwith decree restraining Respondents from using distinctions based on race or color in the administration and operation of the public school system in the District of Columbia.

Respectfully submitted,

(s) .....

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APPENDIX A

Extracts from the Minutes of The Board of Education of the District of Columbia

SUPERINTENDENT OF SCHOOLS
FRANKLIN ADMINISTRATION BUILDING
THIRTEENTH AND K STREETS N. W.
WASHINGTON 5, D. C.

May 25, 1954

To the Board of Education
of the District of Columbia

Ladies and Gentlemen:

On Monday, May 17, 1954, the Supreme Court of the United States issued two opinions, one having to do with segregation in public schools in Kansas, South Carolina, Virginia, and Delaware, and the other with segregated schools in the District of Columbia. The first opinion declared that "such segregation is a denial of the equal protection of the laws" and the second opinion stated:

> "In view of our decision that the Constitution prohibits the states from maintaining racially segregated public schools, it would be unthinkable that the same Constitution would impose a lesser duty on the Federal Government. We hold that racial segregation in the public schools of the District of Columbia is a denial of the due process of law guaranteed by the Fifth Amendment to the Constitution."

The latter opinion also restored to the docket of the Court the case of Brown v. the Board of Education for further argument next fall on certain aspects of the suit. This opinion placed upon the Board of Education and the Superintendent of Schools the responsibility for accomplishing the complete de-segregation of all public schools in the District of Columbia.

The transition from a segregated to a de-segregated type of school organization requires definite administrative decisions and practices. To accomplish the transition in Washington as rapidly and effectively as possible, basic principles need to be established which will govern all administrative procedures necessary in complying with the opinion of the Court. The Superintendent and his staff state as a basic premise that the schools will hereafter operate as a single system and that no reference will be made in any way to racial differences among its pupils or its employees.

The following general principles are calculated to make the best use of the total resources of the school system in plant and personnel, to serve the best interest of all the pupils, and to promote the general welfare of the community. To implement these principles, administrative attention must be directed toward steps which will assure the distribution of pupils and the assignment of employed personnel smoothly and expeditiously. These general principles are presented to the Board of Education for its consideration.

1. *Complete de-segregation of all schools is to be accomplished with least possible delay.*

   De-segregation by grades or by levels would delay the process and would create administrative problems arising from confusion and inconsistencies.

2. *New boundaries are to be established for each school.*

   Definite boundaries will be established for each school to make the optimum use of the school by the pupils living in its immediate area.

   In sections of the city where schools are located very close to each other it will be impossible to set up separate boundaries for each school. In such instances, therefore, the boundaries will be for groups of schools rather than for individual schools.

When the new boundaries have been established and the plan is in operation, adherence to the boundary limitations must be definite and without exception.

This does not mean, however, that there will be any change in the present practice of adjustments of any school boundaries by the Superintendent wherever changes in school population make such action necessary. These boundary readjustments during the period of transition to a de-segregated system will probably be more frequent than they are at present.

3. *Appointments and promotions of all school personnel are to be made on a merit system only and assignment will be in accord with the needs of the service.*

The tenure rights of individuals as to salary level and rank will be maintained.

The duties of some officers will necessarily be changed.

4. *The transition to a de-segregated system is to be accomplished by natural and orderly means.*

Artificial and immediate reassignments of large numbers of pupils, teachers, and officers would be disruptive and will be avoided.

SCHOOL BOUNDARIES AND DISTRIBUTION OF PUPILS

One very significant aspect of the process of de-segregation is that concerned with the distribution of pupils among the various schools. It is evident that the reasonable and proper criteria for this distribution are:

1. the optimum use of all school buildings, and
2. the optimum accessibility of school buildings to the residences of pupils.

These criteria necessarily require the establishment of definite zones to be served by each school or group of

schools. The teachers colleges and the vocational and technical high schools because they are specialized in nature will continue to be city-wide in their services. In establishing zones for the optimum use of all school buildings, the objective will be to assign to each given school or group of schools an area calculated to give each building its fair share of the total pupil load in relation to its capacity.

Although it will not be possible to avoid all traffic hazards or to assure convenient public transportation in every case in considering the accessibility of a school account will be taken of these factors as well as the factor of distance to be travelled by the pupils.

To facilitate the establishment of proper boundaries for all school buildings on a de-segregated basis, the residence cards for all pupils now in the Washington public schools have been set up on the IBM accounting machines according to city blocks, by grade levels, and by schools now attended. In addition thereto each building principal is preparing a spot map to indicate the places of residence of all his pupils. The officers charged with the responsibility of establishing the boundaries will then be able to determine the number of pupils now enrolled in the schools who live in any given city block. They will also know the grade level and the school last attended by each pupil. The compilation of these data will assist in the establishment of the boundary limitations.

In order to provide stability, continuity, and security in the educational experiences of pupils during the transition period, it is agreed that it will be educationally sound to permit pupils at present enrolled in any school to continue in that school even though they are not living within the new boundaries. By this means immediate displacement of unnecessarily large numbers of pupils will be avoided. Progressively with the establishment of new boundaries all children will attend the schools serving the areas in which they live.

The following procedures will be needed to carry out this plan:

1. Fixed zones are to be established for each elementary, junior high and senior high school to insure balanced use of school facilities.

2. All pupils new to the school system or to a particular school level will be assigned to the schools designated to serve the zones in which they live.

3. All pupils at present enrolled in a given school may remain until graduation provided the school is not overcrowded and provided the priority rights of pupils within the new boundaries of the school are not denied. If they prefer they may transfer to the school serving the zone in which they live. Elementary school pupils who change residence will be transferred to the school assigned to the area of the new residence.

4. Transfers from one school to another will be required when necessary to relieve overcrowded conditions.

In order to demonstrate how these procedures will operate, the Superintendent suggests that the cases of the boundaries of two hypothetical schools (elementary, junior high or senior high) be considered: School "A", formerly a Division 1 school, and School "B", formerly a Division 2 school, serving areas within their new boundaries on a desegregated basis, the two areas being contiguous.

By the application of the foregoing procedures, what children must attend and what children may attend School "A"?

These *must* attend School "A"

1. All children living within the new boundaries who formerly attended School "A".

2. All children living within the new boundaries who are entering a school of that level for the first time.

3. All children who are newly residing in the area served by School "A".

4. Children now attending School "B" but living within the boundaries of School "A" if School "B" becomes overcrowded.

Those who *may* attend School "A"

1. Children now enrolled in School "A" whether or not their residence is within the boundaries of School "A" may continue to attend until their graduation subject to the following conditions:

   a. if School "A" becomes overcrowded, pupils previously attending School "A" who live in the area now served by School "B" or any other school will be transferred to that school.

   b. if further relief from overcrowding is necessary after all children not living in the area served by School "A" have been transferred, it will then be necessary to provide additional relief by further changing the boundaries of School "A".

2. Any child living in the area of School "A" may attend that school if he so desires even though he may now be enrolled in School "B" or in some other school.

It should be noted that all children living within the boundaries of any given school will have first priority for attending that school.

These same regulations will apply to School "B", and to all other elementary, junior high or senior high schools in the city except those which are city-wide in their services.

The ultimate distribution of pupils strictly in accordance with established zones will be accomplished through the provisions of the principle that all pupils entering the elementary, junior high, or senior high schools for the first time shall be assigned to the schools designated to serve the zones of their residences. This applies equally to pupils entering the first grade, pupils promoted to

junior high or senior high schools, pupils entering the Washington Public Schools for the first time, and pupils transferring from one area of the city to another.

Finally, authority for the placement of all pupils must be vested in the Superintendent of Schools and his staff, who will administer the plan within the framework of the policies enunciated by the Board of Education.

ASSIGNMENT OF EDUCATIONAL EMPLOYEES

A second major aspect of the process of de-segregation is that dealing with the distribution of the teachers, including librarians and counselors. The following procedures are recommended to govern the assignment of these employees. Here again it is felt that once policies are established through formal action of the Board of Education the school administration shall then be vested with final authority for determining the placement of school employees.

1. *Teachers now in service.*

In general these employees will remain in their present assignments subject to the following conditions.

a. They will be transferred only to meet the needs of the service and then only within the level and/or the subject matter fields of their preparation and experience.

b. When vacancies occur or when there is need for additional teachers in a given school, assignments to that school will be determined in accordance with the best use of available personnel. As is true at present, a controlling consideration in the placement of personnel will be the general fitness and adaptability of a individual for a particular situation.

c. Requests of teachers for transfers will be honored as at present if the transfers are in accordance with the needs of the overall school organization.

2. *Appointment and placement of teachers new to the service.*

a. All appointments of teachers will be made from rated lists resulting from examinations to be held by a single Board of Examiners.

b. All assignments of new personnel will be in accordance with the needs of the service.

Another important aspect in the de-segregation process is the assignment of field officers. Since most of them are specialists in their field it is essential that consideration be given their training and experience.

1. *Principals and Assistant Principals now in service.*

The procedure for the assignment of assistant principals and principals now in the service will be the same as that prescribed for teachers.

2. *Directors, Assistant Directors, Heads of Departments, and other field officers.*

Directors, assistant directors, and heads of departments, who at present serve the system on a divisional basis will be assigned to duties in the same fields of work on a city-wide basis. The duties of most of these positions fall logically into large areas, such as administration, supervision and improvement of instruction, and curriculum revision. Each of these officers will be assigned to some such area in his field on a city-wide basis and will serve all levels of the system.

3. Personnel in special departments and offices now operating on a divisional basis will be reassigned on a city-wide basis.

4. Newly appointed officers in these groups will be selected according to merit under the existing procedures for the selection and promotion of persons for officer positions, but on a system-wide basis.

The Superintendent is not yet prepared to make recommendations as to any formal changes in the functions of the officers on his staff. The work involved in accomplishing de-segregation in so large a school system will require the closely-knit and joint efforts of all these officers for a considerable period of time. They have been engaged in working out the detailed preparation of this plan and it will require their continued cooperative efforts in its inauguration. The responsibilities and duties of such officers as the Assistant to the Superintendent in charge of Business Administration, the Associate Superintendent in charge of Buildings and Grounds, and the Associate Superintendent in charge of Personnel are already city-wide in scope. The work which is at present the responsibility of the officers in charge of instruction and school administration and of educational research will in no wise be lessened by the change in the school system. It is the plan of the Superintendent to assign these officers eventually to duties that will be broadened and on a system-wide basis and which will provide opportunity for the initiation of new services and the development of others not at present sufficiently emphasized. These reassignments will result in considerably improved supervisory and administrative practices in the classrooms of all levels.

PROPOSED SCHEDULE

To begin the implementation of the plan to de-segregate the public schools of the District of Columbia, the Superintendent proposes the following tentative schedule:

By September, 1954—

Completion by the building principals and their supervisory officers of the establishment of new boundaries for all schools except those that will continue to function on a city-wide basis.

Relief of present urgent situations in:

1. Elementary Schools

a. To relieve overcrowding transfer a sufficient number of pupils:

from the Slowe and Noyes Schools to the Woodridge, Langdon, and Burroughs Schools

from the Bruce, Monroe, and Park View Schools to the Raymond, Petworth, Barnard, and Rudolph Schools

from the Madison, Maury, and Lovejoy Schools to the Kingsman, Edmonds, and Blair Schools

from the Taylor, Hayes and Ludlow Schools to the Wheatley School

from the Bryan and the Payne Schools to the Buchanan School

from the River Terrace School to the Benning School.

b. To vacate the Military Road School, no longer needed for classroom purposes, transfer the pupils from that school to the Brightwood School.

2. Junior High Schools

a. To alleviate overcrowding transfer pupils:

from the Randall Junior High School to the Jefferson Junior High School

from the Browne, Eliot, and Langley Junior High Schools to the Eastern Junior-Senior High School

from the Kelly Miller Junior High School to the Sousa Junior High School.

NOTE: These transfers of elementary and junior high school pupils are proposed by the Superintendent because of almost emergency situations and in his opinion are deserving of approval at this time as first steps in the complete de-segregation process. He feels that no cases beyond these should be considered at this time.

3. Senior High Schools

Begin the merging of the McKinley and Armstrong Technical High Schools by transferring to McKinley students in such courses as can be accommodated in the present classroom and shop facilities.

NOTE: The complete merger of these two schools will depend upon appropriation of necessary funds for construction and moving and purchase of equipment.

4. Teachers Colleges

While there is no urgent situation in the college enrollments, it is proposed that both Wilson and Miner Teachers College be opened to qualified students regardless of race and that the two institutions plan special course offerings so that students in either one will be able to take advantage of such offerings in the other. A complete merging of the colleges cannot be accomplished at this time since there is not at present any building available which can accommodate so large an institution.

Attention is called to the fact that the suggestions proposed above providing for de-segregation in certain areas of the school system are in advance of any present requirement of the Supreme Court Opinion.

After the opening of the schools in September, the Superintendent will continue as rapidly as possible with the whole program, taking into consideration the necessary steps, the most important of which are listed below:

1. Assigning pupils to schools on basis of new boundaries.
2. Preparing Board Orders for changed assignments of teachers and officers where necessary.
3. Carrying on programs of in-service training in inter-cultural relationships for all employees.
4. Conducting examinations based on amended legislation.
5. Establishing new eligible lists for teacher appointments.
6. Replanning city-wide student activities, such as sports, cadets, student government, and musical activities.
7. Relocating all field officers now occupying space which will be required for classroom use.
8. Making adjustments in allotments for postage, stores clerks, and evening schools.
9. Moving furniture and classroom equipment.
10. Arranging for adjustments in the delivery of classroom supplies and textbooks to meet changed school enrollments.
11. Recommending to the Board necessary changes in its rules.

If the Board approves the Superintendent's plan and if there are no such setbacks as the failure to secure such

legislative changes as the Corporation Counsel deems necessary or to secure funds that may be necessary to accomplish the physical changes in schools and in the redistribution of classroom equipment and supplies, the Superintendent feels that he can complete and change over to a de-segregated system by September, 1955.

It is the belief of the Superintendent that he cannot in September go beyond the steps outlined in this report because of the lack of sufficient time before the close of school in June as the presence of pupils, teachers and officers is essential to the carrying out of these plans. The official school calendar specifies June 17, as the last day for pupils; June 18, as the last day for teachers; and July 1 through August 31, as the summer vacation period for field officers. The field officers are, of course, subject to call during this vacation period if their services are needed.

The Superintendent submits this report for the consideration of the Board and recommends its approval. For the convenience of the Board he recapitulates below the specific recommendations that will require Board approval before he can begin the administrative steps looking to the actual de-segregation of the public schools of the District of Columbia:

1. As a basic premise, that the public schools operate hereafter as a single system without reference of any kind to or consideration of racial differences among its pupils or its employees.

2. That complete de-segregation be accomplished with the least possible delay according to the suggested scheduled steps.

3. That the transition to a de-segregated system be made by natural and orderly means.

4. That new boundaries be established for each school to provide the optimum use of all buildings and the

optimum accessibility of schools to the places of residence of pupils.

5. That the assignments of pupils to schools be made on the basis of the steps outlined in the section, "School Boundaries and Distribution of Pupils," and according to the calendar established in the schedule.

6. That all appointments, promotions, and assignments of school personnel be made on the basis of merit only and in accordance with the needs of the service.

7. That the assignments of teachers, librarians, counselors, and field officers be made according to the policies outlined in the section, "Assignment of Educational Employees."

8. That members of the Superintendent's immediate staff continue in their present assignments until the whole process of de-segregation has proceeded sufficiently far to enable the Superintendent to present his plan for the reorganization of his staff including such changed duties as he then finds expedient.

9. That a schedule be set up providing by September, 1954, for the establishment of new boundaries for all schools; the closing of the Military Road School; the relief of pupil-overcrowding in those elementary schools and junior high school listed in the schedule on pages 7 and 8; the beginning of the merging of the McKinley and Armstrong Technical High Schools; the opening of both Teachers Colleges on a de-segregated basis; and by September, 1955, the complete de-segregation of all schools in the system.

The Superintendent further recommends that he be authorized to prepare an estimate of funds to be sought through appropriation covering such expenses as will be incurred in the de-segregation process that can not be met from funds already appropriated.

The Superintendent is submitting a separate report covering amendments to existing legislation which he considers necessary to the de-segregation program.

Respectfully submitted

Hobart M. Corning
Superintendent of Schools

The Superintendent made the following statement:

"I think there are probably two points that rise above all others as being points of misunderstanding or difference of opinion, and I would like to speak, if I may, to those two points quite briefly by way of further explanation.

The two points I have in mind are the choice to remain in the present school until completion of that level and the dates for the various steps to be taken for the completion of the de-segregation plan. Now with respect to the first of those two points, the plan proposed by the Superintendent would grant the option to all presently enrolled pupils to (1) remain in their present schools until completion of that level, whether that be elementary, junior high school or senior high school, or (2) to transfer to the school which under the new boundaries will serve areas in which they reside. Every student would be given that option.

It is important to bear in mind that this choice obtains only until a child finishes the school in which he is presently enrolled and that every pupil new to a school by reason of promotion, change of residence, or transfer from another school must attend the school serving his residence area.

It is the firm belief of the Superintendent that this plan is educationally sound, that it is essential to the educational development of children, and that it will result in a

minimum of disruption to the entire school system and to this community.

The advocacy of this plan is based upon the following considerations:

1. The option to remain in present schools until graduation will apply to pupils now in both Division 1 and Division 2 schools.

2. These same children will have equal opportunity to transfer to the schools that will serve their places of residence under newly established boundaries. *Indeed all pupils entitled to such transfers will have priority over any children previously attending the school but living outside the new boundaries.*

3. Therefore, any pupil who wishes to attend the school serving his residence area under the new boundaries may do so.

4. By this plan through the exercise of the options there is positive assurance that in all schools serving areas with mixed population there will be at the outset an admixture of the races.

5. Since every child has the right to attend the school in his home area if he chooses, it is difficult to find convincing arguments for arbitrarily transferring any child who may wish to remain in the school previously attended and who can be accommodated there.

6. The transition to an integrated school system should be accomplished with a minimum of disruption to the educational program of children.

7. Transfer of children from one school to another can have the following effects:

   A. Interruption of the continuity of instruction.

   B. The replacement of well established relationships with teachers and pupils by new associations.

C. The loss to the pupil of the teacher who knows him as a person and who is acquainted with his educational background and needs.

D. Loss or at least interruption of the advantages of prestige and leadership which he has established.

E. Since in the secondary schools the course offerings are not identical, but are determined in large part by the requirements and demands of students, the Superintendent feels the need of the interim period to make sure that after all transfers are settled as few students as possible will be interrupted in their present planned curriculums, since courses can be organized with teacher transfers where necessary to obviate this kind of difficulty.

8. Transfer of all students initially would require a great many more moves of teachers and resulting reorganization of school staffs and school offerings than are necessary to accomplish the de-segregation process.

In considering this proposal of the Superintendent a controlling consideration should be the fact that *the purpose of public education everywhere is the welfare and progress of the child.* The Superintendent feels that unnecessary transfers to accomplish a desired goal immediately and to satisfy adult desires would be a blow to the welfare and progress of the child for whom the schools exist.

The second point to which I'd like to give further explanation has to do with the timing of the various steps to complete integration.

A point of view has been expressed that all children should be assigned to schools according to the newly established boundaries by September, 1954. For the following reasons the Superintendent believes that only the significant emergency transfers recommended should be made as of September, 1954.

1. Using the spot maps for all schools that have been prepared at the Superintendent's direction and the I.B.M. cards, representing 105,063 students, the drawing of new boundary lines can be completed earlier than September as originally estimated.

2. The assignment of pupils to schools according to the new boundaries, however, is not accomplished by indicating these boundaries on a map. The satisfactory accomplishment of this complicated process of transferring large numbers of children and preparing the schools to receive them involves the following steps:

   A. The actual drawing of new boundary lines for every school.

   B. The announcement of these new boundaries to the patrons of the schools together with the furnishing of sufficient explanatory material to enable them to understand how the new boundaries will operate.

   C. The securing of school choices signed by the parent of every child who is entitled to any option.

   D. The compilation of these choices to determine the total number of pupils to be accommodated in each school according to the new boundaries.

   E. The further readjustment where possible of boundary lines for any school which at this stage appears to be overpopulated.

   F. The listing by the building principals of all pupils to be transferred together with the preparation of the usual necessary transfer data including in the secondary schools the preparation of an individual transcript of record for each pupil.

   G. Notification to all parents whose children are to be transferred.

H. The necessary reorganization of classes according to grade or subject matter following the adjustment in individual school enrollments.

I. The necessary changes in teacher assignments following the completion of pupil assignments.

J. The necessary building changes and moves where rooms now used for office purposes will be required for classes.

K. The moving of teacher and pupil furniture to accommodate the changed building enrollments.

L. The reallocation and transfer of equipment, textbooks, and classroom supplies.

All of these steps are essential to a smooth and efficient transition.

3. These steps can not be accomplished in the summer when the schools are not in session and pupils, teachers, parents and field officers are not available. Even though it is possible to require educational employees to serve during the vacation period any move in this direction would result in lowered morale at a time when it should be at its highest point. Furthermore, there would still be no means of communicating with pupils and parents.

4. It is highly important that the moving of so many children and teachers and the complete changeover on so vast a scale should be undertaken only after detailed planning and conferences.

5. It is the opinion of the Superintendent that the complete transition of the school system in a sound orderly way by September 1954 is administratively impossible.

The Superintendent in his May 25 report recommended that the transition be completed by September, 1955. It

was explained that complete de-segregation would be accomplished step-by-step during the school year beginning in September 1954. The first steps recommended for September involved the transfer of approximately 2700 children from 21 present Division 2 schools to 18 Division 1 schools to relieve serious over-crowding in the colored elementary and junior high schools. It also recommended the opening of the teachers colleges to both races and the merging of Armstrong and McKinley High Schools. The report did not detail the progressive steps which can be undertaken during the school year 1954-55. The steps which seem possible in present planning are:

1. Completion of boundaries by July 1, 1954.

2. Additional transfers as soon after the opening of the school year as possible by the application of the new boundaries in certain areas in which the number of pupils to be transferred is very limited.

3. The completion of de-segregation of the senior and vocational high schools by February 1, 1955.

4. Such other transfers as may be found possible and desirable when the actual fall enrollments are available.

I believe, Mr. Chairman, that that is about all I care to say other than to remind you that this plan was worked out by the staff with the Superintendent in a series of many meetings which were held, some of them night meetings, long sessions and have been given very careful consideration. It is our opinion that the slight amount of delay which is involved in this problem is essential for the orderly working out of this very complicated program. Furthermore, the slight delay recommended is not serious when we consider that the steps taken by us toward de-segregation in September and those which may be taken during the next school-year before the final decree of the

Supreme Court is handed down are actually in advance of legal necessity.

Emphasis should be placed, therefore, it seems to me, not upon any incompleteness of the process in September, but upon the fact that changes made by that time are in advance of any final directive from the Supreme Court.

The Superintendent and his staff will be held responsible for the successful administration of plans for de-segregation. They should not, therefore, be required to follow a schedule which in their judgment cannot be met by orderly and well thought-out educational procedures. The sincere, honest, and objective opinion of the staff as to the time required and the methods to be used should be given consideration. I believe that that is all." Minutes of the Thirteenth (Special) meeting of the Board of Education, 1953-54 held May 25, 1954, and Recessed Session held June 2, 1954.

SUPERINTENDENT OF SCHOOLS
FRANKLIN ADMINISTRATION BUILDING
THIRTEENTH AND K STREETS NW.
WASHINGTON 5, D. C.

June 23, 1954

To the Board of Education
of the District of Columbia

Ladies and Gentlemen:

The Superintendent submit the following calendar of dates for the steps that have been or are to be taken to complete the program of de-segregation of the public schools of the District of Columbia

STEPS IN DE-SEGREGATION PROGRAM ALREADY ACCOMPLISHED

June 8	Temporary reorganization of the two Boards of Examiners into one Board under the direct chairmanship of the Superintendent.
June 10, 11, 12	Teacher examinations for elementary, junior high, and vocational high schools on a completely integrated basis.
June 11	Notices sent to all high school principals announcing that both Miner and Wilson Teachers Colleges are receiving applications for admission in September from any qualified person, regardless of race.
June 11	Instructions issued to Heads of Departments of Military Science and Tactics to prepare and submit suggested plan for integration of cadet program for 1954-55 school year.
June 14	Meeting of First Assistant and Associate Superintendents concerned, Directors of Health, Physical Education, Athletics, and Safety, and Directors of Athletics to discuss all sports programs for 1954-55 school year. Directors of Athletics to report back on June 24 with suggested schedules.
June 14	First field officer examination announced on a city-wide basis (five such announcements issued to date).
June 15	Completion of tabulation and listing of data from registration cards for approximately 100,000 pupils.
June 17	Preliminary steps completed to effect transfers of pupils in elementary, junior high, and senior high schools listed in Superintendent's report of May 25. (Proposed Schedule, pp. 7-8)
June 23	Revised legislative language submitted to the Board covering necessary amendments to existing law because of Supreme Court decision—

Concerning First Assistant Superintendents
Concerning Chief Examiners
Concerning Boards of Examiners
Concerning School Censuses

STEPS IN DE-SEGREGATION PROGRAM TO BE ACCOMPLISHED

July 1	Superintendent to submit to Board maps and descriptive data to show new boundary lines for all elementary junior high and senior high schools. All necessary data concerning new boundaries to be furnished school principals and press to insure publicity reaching all school personnel and patrons.
July 1	Superintendent to submit recommendations for merging of all lists of persons eligible for appointment to all teacherships on all levels.
July 6	Completion of estimate for 1956 budget for funds needed to convert McKinley High School to a modern technical school to permit the eventual closing of the present Armstrong Technical High School.
September 1*	*Use of new boundaries* on all levels for all pupils new to the public schools including kindergarten and first grade pupils entering the public schools for the first time.
September 13*	Evening schools to open for operation on an integrated basis.
September 13*	Transfers of selected Division 2 elementary school pupils who, because of present boundaries, are required to travel excessive distances where there are present Division 1 schools near their homes. This is possible as it involves a limited number of pupils and in no instance will require reorganization in a school receiving pupils or the transfer of furniture or equipment. Any similar cases on the secondary level will be considered on an individual basis.

* This step has not previously been reported to the Board.

September 13 Pupil changes indicated by the following table:

ELEMENTARY SCHOOLS

Pupils to be transferred from 12 schools in Division 2 to 14 schools in Division 1		Estimated number of pupils to be transferred	Resulting number of pupils in integrated schools based on June enrollments**
FROM	TO		
Bruce	Barnard		
Bryan	Benning		
Hayes	Blair		
Lovejoy	Brightwood		
Madison	Buchanan		
Maury	Burroughs		
Military Road	Edmonds		
Noyes	Kingsman	1503	6341
Park View	Langdon		
River Terrace	Petworth		
Slowe	Raymond		
Taylor	Rudolph		
	Wheatley		
	Woodridge		
Transfer of special cases of pupils travelling excessive distances to schools nearer their homes (18 schools)			
Bancroft	Patterson		
Congress Heights	Powell		
Eaton	Randle Highlands		
Hearst	Rudolph		
Janney	Simon	96	9603
Key	Stoddert		
Lafayette	Truesdall		
Orr	Tyler		
Oyster	West		

** This number does not include the schools which are integrated by the admission of pupils new to the school system and the new kindergarten and first grade pupils.

		Estimated number of pupils to be transferred	Resulting number of pupils in integrated schools based on June enrollments**
Junior High Schools			
Pupils to be transferred from 5 junior high schools in Division 2 to 3 junior high schools in Division 1			
FROM	**TO**		
Browne Eliot Langley Miller Randall	Eastern Jr.-Sr. Jefferson Sousa	844	3050
Senior High Schools			
Pupils to be transferred from Armstrong to McKinley High School		460	1230
Teachers Colleges			
Admission of applicants without regard to race			908
Evening Schools			
Opening Evening Schools to all students			8677
	Totals	2903	29809

September 13	Completion of building organizations including the transfer of teachers in some schools.
September 13	Completion of transfer of furniture and equipment and textbooks and classroom supplies between schools affected by pupil transfers.
October 1-15	Explain to all pupils the options provided either for remaining in present schools or transferring to new schools.

** This number does not include the schools which are integrated by the admission of pupils new to the school system and the new kindergarten and first grade pupils.

Hold meetings for parents of all children who are qualified to request options to explain the choices although no assurance can at that time be given whether the options can be approved for February 1 or for a later date.

Written statements to be filed not later than November 11 confirming all options requested. Sixth, ninth and twelfth grade pupils not to be transferred.

The Superintendent repeats his desire to take such additional progressive steps as are consistent with the welfare of the children. He will, therefore, examine and tabulate all the written options that are filed to determine the numbers of pupils residing outside the new boundaries who wish to remain in their present schools and the numbers of those who wish to transfer to the schools serving their residence areas. On the basis of these findings he will then make such changed pupil assignments as are found feasible without forced transfers at the beginning of the new semester in February.*

January 31 1955*

Assign all junior high school graduates to senior high schools on the basis of the new boundaries.

Make such additional teacher transfers and school reorganizations as are necessary.

Effect such transfers at all levels as may produce a better balanced use of all school facilities, and at the same time be consistent with the educational program of the children themselves.

Arrange for building changes and transfers of equipment and supplies as are necessitated by the changed pupil assignments.

February to June 1955

Complete the processing of all options not acted upon for February with the consequent pupil transfer and reassignment of teachers on September 1, 1955.

Arrange for additional transfers of furniture and equipment and textbooks and supplies, where necessary.

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* This step has not previously been reported to the Board.

September 1, 1955*	The Superintendent announces one further important step in the integration process which is now presented. This will involve the closing of the Cardozo High School by June, 1955, and the merging of the Wilson and Miner Teachers Colleges in the present Cardozo building in September, 1955. The rezoning of the senior high schools has revealed such an average of seating space that Cardozo can be closed and the pupils accommodated in the remaining senior high schools, ... ing the Cardozo building for college use. It is planned also at the same time to open a junior high school unit in the same building to serve as a laboratory school for the new merged college. The Superintendent will submit a subsequent and more detailed report on this new plan. As the Superintendent studies the entire process of integration and discovers additional steps which can be taken he will advise the Board of Education.
September 1, 1955	All steps will have been taken to complete desegregation of the public schools. Technically, desegregation will have begun in all schools in September, 1954, since the admission of all pupils including kindergarten and first-grade pupils new to the public schools will be on the basis of the new boundaries. All senior high schools will, in addition, be further integrated by the admission of all junior high school graduates in February, 1955, on the basis of the new boundaries.

The Superintendent recommends that the Board of Education approve this schedule and authorize the Superintendent to proceed administratively to carry out the various steps enumerated.

Respectfully submitted,

H. M. Corning
Hobart M. Corning
Superintendent of Schools.

The Superintendent submitted the following report:

"September 22, 1954

"To the Board of Education
of the District of Columbia

"Ladies and Gentlemen:

"Because of the important and far reaching changes that have accompanied the opening of the public schools, I am presenting this summary of the happenings thus far in September.

"By September 10, the first working day for teachers, the staff officers had completed their work of reorganization of schools in accordance with the steps in the desegregation program presented to the Board in June. Eligible registers of applicants for teacherships had been merged and appointments had been made to fill vacancies from these merged lists. Other teachers had been transferred to meet changed school populations. Many pupils—in addition to those promoted from the elementary to the junior high schools and from the Junior high schools to the senior high schools—had been transferred to new schools according to the plans formulated in the late spring. Furniture had been moved to meet changes in building use and supplies, equipment, and textbooks had been readied for a new and different opening school day.

"At the first teachers meetings in more than one-fifth of the building for the first time colored and white teachers were side by side as they participated in the final plans for the return of their pupils on the following Monday. In the afternoon elementary school personnel gathered before the television screens in their respective buildings to receive my direct greetings.

"There was admittedly tension across the city on the opening day. Much careful preparatory work has been done—not only in the way of checking and oiling the machinery of school admini-tration—but more deeply and of far greater importance in increased understanding and

sympathetic acceptance of the many variations in cultural relationships. Some of this had been accomplished by city-wide, official workshop sessions and some by the participation of hundreds of school employees on a wholly voluntary basis in meetings, discussions and study in order to be better prepared to meet changes such as now were set into action by the pronouncement of the Supreme Court in May, 1954, on the subject of segregation in the public schools of the United States.

"We no longer ring bells to summon our pupils to school. On Monday, September 13, without signal and beginning long before nine o'clock, children left their homes for school—about 97,000 of them, many to go to buildings near their homes which they had not hitherto even entered. To help in this day of transition police officers were available near every school building in the city to watch traffic conditions, to assist at street crossings, and in general to cooperate in the beginning of a new kind of school system.

"I had heard some rumors of the possibility of friction on this opening day, but as the morning passed I received no appeals for assistance, no word of difficulties, but on the contrary reports of an amazingly successful opening in which parents, children, and teachers outdid themselves in a determined cooperative effort that resulted in a very satisfying record. Children were excused at 12:15 this first day in order that teachers and school officers might have the remaining hours to complete the jobs that were still to be done before the first full day of the study, work and plan that is provided for our pupils program.

"The opening day of school is always almost wholly out of the hands of the central school officers and the full responsibility for the activities that day lies in the field. I can, therefore, unreservedly commend to the Board all the teachers and officers in the field because of their performance on that Monday and during the days that have followed which have been wholly free from untoward incidents. Building visits have been made to many schools

during these days and the reports are the same—fine spirit, pleasant relationships, and a buzz of coordinated activities that spell a good school in full operation.

"There have been some unhappy and some disappointed individuals. There have been a number of parents who have sought transfers for their children because of the effect which the changes have made in their own families. In some instances it has been possible to meet their requests, in others not.

"Early in the summer I began to receive letters requesting consideration in the placement of pupils in September. Some of the problems presented were caused by the new boundaries, some by the fact that pupils new to the system were required to enter the school serving the areas of their residence while their brothers and sisters were attending another school; thus dividing the family, some because of physical conditions which necessitated special consideration. The long distances which some pupils were required to travel caused parents to ask for transfers without waiting for the options provided for in the Superintendent's plan.

"I therefore appointed a committee of eight school officers to review these cases and to come to a decision in each one. This committee consisted of two senior high principals, two junior high principals and two directors of elementary education and the Executive Assistant to the Superintendent and the Administrative Assistant to one of the First Assistant Superintendents.

"The work of this committee has not been completed, although, of the almost 500 letters already processed it has been possible to make favorable adjustment for approximately 60 per cent. Some of these requests were at first denied but because of changed circumstances and administrative action it was possible later to give favorable action. About 10 per cent of the cases have been rejected, and the remaining 30 per cent are dependent on the options plan. Replies to parents giving the committee decisions were delayed because of the great number of interviews

and telephone calls which had to be handled by the co-chairmen.

"There are approximately 200 additional cases before the committee for review. Many of these, however, will be taken care of by the options which have been called for in the elementary and senior high schools and which will be called for in the junior high schools on September 23. The greatest single problem presented in these letters is that of the divided family. Parents will now be able to exercise their options to have their children transferred to the school serving their area and in this way, if they so desire, have their families together in the same school.

"As rapidly as possible any remaining cases which cannot be solved by the exercise of the options will be processed by special committee.

"Considerable reference has been made to changes in our schools this fall. For the purpose of record, these are the steps in the desegregation plan accomplished during these opening days:

> "New kindergarteners, new first graders, and all pupils attending Washington schools for the first time entered schools on the basis of the new boundaries.
>
> "More than 3000 elementary and junior high pupils transferred to schools in general nearer their homes to relieve overcrowded school centers.
>
> "About a hundred children travelling excessively long distances last year were permitted to transfer to much nearer schools.
>
> "At the Thomson and Walker-Jones schools classes were organized experimentally on a lower pupil-teacher ratio and special arrangements have been made to provide in these schools increased medical, nursing, and psychiatric service. These experiments have the sponsorship of the Commissioners' Youth Council.
>
> "In the former Military Road School, a center for not more than twenty mentally retarded children is being established in which the three special teachers provided in the 1955 Appropriations Act will work.

"The merging of the McKinley and Armstrong High Schools was begun with the transfer of several hundred children to McKinley.

"Both Miner and Wilson Teachers Colleges were opened to all qualified applicants.

"All evening schools were opened on an integrated basis.

"Since the opening of schools the calendar has been stepped up so far as the filing of 'options' applications is concerned:

"On the senior high school level about 460 such applications are now being processed.

"Applications for options on the elementary level have been called for and notices concerning such applications on the junior high school level will be issued on September 23.

"No guarantee can of course be made that all the applications will be approved.

"To enrollment of 97,000 on the opening day had increased to more than 103,000 on Friday, September 17.

"This report is for the information of the Board and I wish to express for myself and the officers our appreciation of the staunch support we have had from board members during this period. I think that the Board members will understand my pride in what has been done this fall and in the manner in which it has been accomplished. I repeat my admiration for the fine work that has been done by the school personnel and the understanding and cooperation of the community as a whole.

"Respectfully submitted,

(Signed) H. M. Corning
Hobart M. Corning
Superintendent of Schools"

Minutes of the Fourth (Stated) Meeting of the Board of Education, 1954-55 September 22, 1954, pp. A-18-A-22.

APPENDIX B

Circular of the Superintendent of Schools of the District of Columbia

PUBLIC SCHOOLS OF THE DISTRICT OF COLUMBIA
FRANKLIN ADMINISTRATION BUILDING
WASHINGTON 5, D. C.

Superintendent's Circular No. 79
March 9, 1954

To All School Officers:

At the meeting of the Board of Education held on December 16, 1953, the Superintendent advised the Board of Education that he planned to set up a series of meetings in the general field of intercultural relationships. The first meeting which was in the nature of a seminar was held on March 3, for members of the Superintendent's staff and members of the Board of Education. It was felt that since meetings of this sort are to be planned throughout the school system it would be well to start with a pilot meeting for chief administrative officers and board members. Since additional meetings are to be called it is desirable that field officers and teachers know the general nature of the meeting which was held on March 3.

To assist in this meeting three experts in the field were brought to Washington:

Dr. John L. Milligan, Assistant Commissioner of Education in charge of Intercultural Affairs, Newark, New Jersey.

Dr. Dan W. Dodson, Professor of Education and Director of Curriculum and Research Center for Human Relations Study, New York University.

Mr. William E. Vickery, Education Director, National Conference of Christians and Jews.

The Superintendent opened the meeting by stating its general purpose which was "to create a climate for general

understanding and improved relationships among the various segments of our population." The Superintendent stated that the seminar was not geared to any particular type of school organization but that there is need for better intercultural relationships whether the schools continue to be segregated or whether integration is ordered.

The Superintendent called attention to the comments of one civic leader who contended that too much emphasis has been placed upon the preparation of the white population. This leader contended that a four-way preparation is needed—a preparation of the colored population for right attitudes if integration is ordered and preparation against the disappointment if segregation is continued; on the other hand, the preparation of the white population for the adjustments which will be necessary if integration is ordered and preparation for the development of right attitudes if segregation is continued. It would seem that this analysis and advice are good and that better intercultural understandings and relationships are desirable and needed whatever the circumstances may be.

The Superintendent stated further that the seminar was not dealing "with segregation or integration as such or with the advantages and disadvantages of either system, but that we are dealing rather with the problem of developing desirable human understandings and relationships as we live together and work together for the education of all the children—no matter under what general plan the schools are organized."

The Superintendent stated that the workshop should be characterized by a down to earth consideration of the following topics:

1. Practical problems in the field of intercultural relationships now existing.
2. Practical problems in interracial relationships which may present themselves if schools are integrated.
3. Practical solutions of these problems.

4. Procedures for breaking down prejudices and misunderstandings.

5. Methods of developing cooperative and harmonious effort among the patrons of the schools and all school personnel.

6. General nature of meetings to be held.

During the months of April and May a series of seminars is being set up which will make this sort of experience available to all officers in the field. This is done in the hope that field officers in turn will provide similar experiences for the teachers with whom they are associated. The exact dates of these subsequent seminars have not been set. Neither can announcement be made at this time of the leaders who will assist the groups. Complete announcement will be issued soon. A general meeting will be held for teachers also before the close of school.

Yours very sincerely,

HOBART M. CORNING
Superintendent of Schools

APPENDIX C

Extracts from the Minutes of The Board of Education of the District of Columbia

MINUTES OF THE SEVENTH (STATED) MEETING OF THE BOARD OF EDUCATION 1952-53 DECEMBER 17, 1952

[p A-30f] Mr. Tobriner stated he wishes to present a matter of new business to the Board at this time. He stated it is known by everyone that cases involving segregation in school systems have been argued before the Supreme Court of the United States and among those cases is the case of Bolling against Sharpe which involves the constitutionality of the present segregated system in the District of Columbia. Accordingly, Mr. Tobriner continued, there is a possibility that the Court at some time in the future, near or far, will hand down a ruling which may possibly involve the end of segregation in the District of Columbia. Mr. Tobriner stated he is advised that the Superintendent of Schools is in the process of making plans for that possibility. Mr. Tobriner stated further he feels the Board of Education would be highly derelict in its duty if it did not take into account that possibility and make preparations for that eventuality. Mr. Tobriner thereupon made a motion that the Board at its next stated meeting or adjournment thereof, through its President and its Superintendent, request to appear before it leading citizens of this community, officials of the District of Columbia, members of the clergy and group representatives to give the Board the benefit of their views on two subjects: (1) the question of the mechanics of integration, if it should be ordered, and, (2) what educational preparation might be deemed necessary in order to make integration, if it is ordered, work more freely. The motion was seconded by Colonel Hamilton.

Mrs. Phillips stated that the mechanics of this matter might be contained in the decision of the Court with which Mr. Tobriner agreed.

As a suggestion from the Chair, Acting President Steinem stated it was his personal feeling, inasmuch as the Board of Education has been represented by counsel, that before the Board goes on record adopting or rejecting the pending motion, it should consult with the Corporation Counsel, D. C. who represented the case of the District of Columbia before the Supreme Court, to ascertain whether any action of the Board, might, in any way, be prejudicial to the presentation of his case.

In support of the pending motion as he said he understood it, Colonel Hamilton stated the motion has nothing to do with the ultimate action of the Court and the Board is not trying to influence the Court one way or the other. Colonel Hamilton stated further that Mr. Tobriner by his motion is suggesting that the members of the Board give this matter some thought and seek advice from cross sections of the community.

Mr. Faulkner stated he felt Mr. Tobriner's motion would be a good one if and when the Court should decide that segregation is illegal. He stated that he also felt Mr. Tobriner's motion was therefore premature at this time and that he would oppose it on that ground.

[p A-32f]

The Superintendent stated he had two observations to make. First, he said, as he understands Mr. Tobriner's motion, the purpose of the meeting would not be to argue whether or not the public schools should be segregated or integrated and, therefore, that issue would be left entirely out of the meeting. The purpose of the meeting would be to get the advice of organized citizenry in the community on how the public school system could operate best if the Supreme Court decides that the public schools are to be integrated. p A.33. The Superintendent stated that as he further understands the motion, the testimony to be given

at such a meeting would, of course, be wholly advisory on the part of those who appear and the Board of Education "would not necessarily follow any of the suggestions indeed (sic) that are brought in." The Superintendent stated that as a matter of fact it is very important at some time or other to get community reactions on the two points which Mr. Tobriner has included in his motion and the only misgiving that he has about the meeting is as to its immediacy—the next Board meeting—together with whether or not in the judgment (sic) of the Corporation Counsel the meeting might be something which would prejudice the opinion of the Court one way or the other. The Superintendent said that is a point about which the lawyers could better give advice. As to the question . . .

Colonel Hamilton suggested that a special evening meeting be held by the Board as the Board does hold evening meetings with citizens on budget requests because he could not conceive of there being enough time for this matter at an afternoon Board meeting if the Board is to transact its other business also.

Mr. Tobriner thereupon amended his pending motion to provide that the meeting be held either at a regular or adjourned meeting of the Board or at such special meeting as the President desires to call. This amendment was accepted by Colonel Hamilton, the seconder of the motion.

The Superintendent asked if the Board wished the calling of such a meeting by the President of the Board to be dependent upon the advice of the Corporation Counsel. Mr. Tobriner replied that he did not believe the Corporation Counsel's advice was at all material on this matter, that the matter is with the Court and the Supreme Court is not going to be prejudiced by what the Board does or does not do after the case has been submitted.

[p A-34] The motion as amended was put and carried with Colonel Hamilton, Miss Parker, Mrs. Williams, Mr. Williams and Mr. Tobriner voting in the affirmative and Mrs. Phillips and Mr. Faulkner voting in opposition to the motion.

MINUTES OF THE EIGHTH (STATED) MEETING OF THE BOARD OF EDUCATION 1952-53 JANUARY 21, 1953

[p A-36ff]

The Superintendent submitted the following report which he read:

"January 21, 1953

"To the Board of Education of the
District of Columbia

"Ladies and Gentlemen:

"At the meeting of the Board of Education held on December 17, 1952, the following motion was passed by vote of the Board:

> "That at a regular or adjourned meeting of the Board or at such special meeting as the President desires to call, the Board, through its President and its Superintendent, request to appear before its leading citizens of this community, officials of the District of Columbia, members of the clergy and group representatives, to give the Board the benefit of their advice on two suggestions (sic) (1) the question of the mechanics of integration if it should be ordered and (2) what educational preparation might be deemed necessary in order to make integration, if it is ordered, work more freely.

"In the discussion of this motion, it was clearly set forth that the purpose of the meeting is not to permit arguments as to whether the schools should be segregated or integrated and that the advice of community organizations would be sought at this meeting only on the two questions set forth in the motion.

"As a result of discussions which have been held by the Superintendent and his staff on this subject, the officers and the Superintendent are unanimously of this opinion that this meeting when called would be more helpful to the Board of Education and the discussion by citizen groups would be more meaningful if opportunity would first be

given to any organization or individuals in the community to submit in writing to the Superintendent of Schools their advice on the two questions contained in the motion.

[p A-37] The Superintendent would tabulate the views that are expressed in such statement and report to the Board of Education a summary which would be a general pattern of the thinking of the community on these two important questions. This summary would then be used by the individuals and groups who may be invited to appear before the Board of Education in accordance with the Board actions above referred to. The community reactions to this problem is of course important. At the same time the Superintendent presents the summary of community opinion or shortly thereafter, he will present to the Board of Education the result of his own study, with the officers of the administrative procedures which would be involved.

"This suggestion and recommendations are given not to supersede or circumvent the action of the Board in authorizing the calling of a meeting, but rather as a preliminary step in order to assure that the meeting, when called will be of more specific help than would otherwise be possible.

"The Superintendent recommends, therefore, that the Board of Education approve this as a preliminary step and authorize the public announcement that any interested organization or individual in the community is invited to submit its suggestion in writing, that the advice and suggestions should be confined to the two questions proposed in the Board actions and that the written statements be submitted to the Superintendent of Schools on or before February 4, 1953."

. . .

[p A-38] There was a feeling on the part of some of the members that the deadline of February 4, would be too short a time. Mr. Tobriner suggested that the deadline could be extended if necessary.

MINUTES OF THE ELEVENTH (STATED) MEETING OF THE BOARD OF EDUCATION 1952-53 APRIL 15, 1953

[p A-13f] The Superintendent submitted the following report:

"April 15, 1953

"To the Board of Education of the
District of Columbia

"Ladies and Gentlemen:

"At the meeting of the Board of Education held on January 21, 1953, the Board on recommendation of the Superintendent, authorized a public announcement to be made that any interested organizations or individuals submit suggestions in writing on (1) the question of the mechanics of integration if it should be ordered, and, (2) what educational preparation might be deemed necessary in order to make integration, if it is ordered, work more freely.

"In his report to the Board on January 21, 1953, the Superintendent indicated that he would submit a summary of the statements submitted which would be a general pattern of the thinking of the community on these two important questions. Attached hereto is a summary of the suggestions received together with an alphabetical list of the organizations and individuals who submitted communications. This summary is submitted for the information of the Board in the belief that it may be helpful to the Board in evaluating public opinion as expressed in these written statements."

The Superintendent stated that copies of the summary had been placed in the books of the members for this meeting. Colonel Hamilton asked if the Superintendent has a recommendation to make at this time. The Superintendent replied he did not and that he was still working on the matter in a series of meetings. Mr. Williams asked if the analysis in the summary reflected the thinking of

the Administration and the Superintendent replied that it did not. Mr. Williams asked when the Superintendent would present his recommendation. The Superintendent replied that he would probably report next month and that "if there is a decision earlier than the next month" he will be ready earlier than the next meeting to present a plan to the Board.

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Brief for Respondents on Formulation of Decree

IN THE

Supreme Court of the United States

OCTOBER TERM, 1954

No. 4

SPOTTSWOOD THOMAS BOLLING, ET AL.,
Petitioners,

v.

C. MELVIN SHARPE, ET AL., *Respondents.*

VERNON E. WEST,
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PRINTING DIVISION—D. C. GOVERNMENT

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Affidavit of the President of the Board of Education, dated November 12, 1954, concerning Board action and views on integration.

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Brief for Respondents on Formulation of Decree

ARGUMENT

In the decision of this case on May 17, 1954 the Court concluded its opinion as follows:

> "For the reasons set out in Brown v. Board of Education, this case will be restored to the docket for reargument on questions 4 and 5 previously propounded by the Court. 345 U. S. 972."

In *Brown* v. *Board of Education*, the Court, on the same day, decided several State cases argued and reargued jointly

with this case. Therein the Court also ordered restoration of those cases to the docket for the same purpose. In the *Brown* case the Court observed: "On reargument, the consideration of appropriate relief was necessarily subordinated to the primary question * * *. Because there are class actions, because of the wide applicability of this decision, and because of the great variety of local conditions, the formulation of decrees in these cases presents problems of considerable complexity".

While, admittedly, the decision of this case presented to the respondents problems of considerable complexity, they have promulgated and put into effect in the public school system of the District of Columbia measures to accomplish education of pupils without regard to race in accordance with the decision of the Court.

Set forth in the appendix to this brief are the following:

Exhibit 1—Report, dated May 25, 1954, containing a declaration of policy concerning the question of integration in the public schools (approved by the Board of Education, May 25, 1954).

Exhibit 2—Report of the Superintendent of Schools to the Board of Education, dated May 25, 1954, outlining plans for the desegregation of all schools (approved by the Board of Education, June 2, 1954).

Exhibit 3—Report of the Superintendent of Schools to the Board of Education, dated June 23, 1954, setting forth a schedule of dates for completion of the program of desegregation of the public schools of the District of Columbia (approved by the Board of Education, June 23, 1954).

Exhibit 4—Action of Board suspending paragraph 4 of its declaration policy.

Exhibit 5—Affidavit of the Superintendent of Schools setting forth progress of the program of integration of the public schools.

Exhibit 6—Affidavit of the President of the Board of Education concerning Board action and views on integration.

It will be seen from the foregoing exhibits that positive steps have been taken and are well under way for complete desegregation of pupils in the public schools of the District of Columbia, and that, according to the schedule approved by the respondents, the entire program will have been completed by September 1, 1955, i.e., before the beginning of the next full school year.

While Exhibit 6 shows that there was wide divergence of opinion among the respondent members of the Board of Education concerning the method and the timing of the program of desegregation and that some of the Board members are still not satisfied therewith, it further shows that the Statement of Principles, the General Plan and the Time Schedule were all approved by a majority of the Board. Except for a brief and mild expression of emotions in four or five schools above the elementary level, the transition has proceeded without incident.

Believing that their legal position on the principal question had been fully set forth in the original brief filed herein, counsel for respondents confined themselves in their Brief On Reargument to answers to questions 4 and 5 propounded by the Court in its order of June 8, 1953. Therein counsel set forth their position that a declaration of unconstitutionality of public schools does not require immediate transition to an integrated school system and recommended that this and other cases pending before the Court be re-

manded to the courts of original jurisdiction with instructions for such courts to order the commencement of integration at the earliest praticable date, with complete integration to be accomplished by a definite future date to be fixed by this Court, and with progress toward completion of the program to be periodically investigated by the lower courts.

Counsel for respondents adhere to the legal position set forth in their Brief on Reargument.

Unless, therefore, the Court disagrees with the first premise, i.e., that the unconstitutionality of segregated schools does not require an immediate transition to an integrated system, it is submitted that no directive of compliance with the decision of May 17th is necessary, because the time schedule which respondents have put into operation for the accomplishment of complete integration of the schools in the District of Columbia is as short as can reasonably be devised to establish, in orderly fashion, a school system which complies with the decision.

If the Court agrees with the last premise, then, it is submitted, the entire matter, so far as the District of Columbia school system is concerned, is, for all practical purposes, moot—at least upon the completion of the time schedule in the very near future the matter will be completely moot, and counsel for respondents submit to the Court that there will be no necessity for even the remand of this case to the United States District Court for the District of Columbia.

CONCLUSION

The basic legal position of counsel for respondents was fully set forth in their brief on reargument and nothing need be added thereto. Herein there is fully set forth a report of progress towards complete compliance with the decision of this Court which demonstrates that within less than ten (10) months from the date of final argument the controversy so far as the District of Columbia is concerned will be com-

pletely moot. Under the circumstances, it is submitted that no directive from the Court is necessary for compliance with its ruling.

VERNON E. WEST,
Corporation Counsel, D. C.,

CHESTER H. GRAY,
Principal Assistant Corporation Counsel, D. C.,

MILTON D. KORMAN,
Assistant Corporation Counsel, D. C.,

LYMAN J. UMSTEAD,
Assistant Corporation Counsel, D. C.
Attorneys for Respondents,
District Building,
Washington 4, D. C.

EXHIBIT 1

BOARD OF EDUCATION OF THE DISTRICT OF COLUMBIA

FRANKLIN ADMINISTRATION BUILDING

Thirteenth and K Streets, NW.

Washington 5, D. C.

C. Melvin Sharpe, President
Arcadia Near Phillips, Vice President
Wesley S. Williams
Mary H. Parker
West A. Hamilton
Walter N. Tobriner
Robert R. Faulkner
Margaret Just Butcher
Rowland F. Kirks
Elise Z. Watkins, Secretary
Hobart M. Corning
Superintendent of Public Schools

May 25, 1954

To the Board of Education
of the District of Columbia

Ladies and Gentlemen:

The Board of Education at its meeting held May 19, 1954, through its President, appointed the undersigned Board members as a Special Committee for the purpose of drafting principles for presentation to the Board at its special meeting on May 25, 1954, on the question of integration in the public schools.

This Special Committee held a meeting on May 22, 1954, in the Board Room of the Franklin Administration Building. Those present were the entire Special Committee, Colonel West A. Hamilton, Dr. Margaret Just Butcher and Miss Mary H. Parker, members of the Board of Education, the Superintendent of Schools and the Secretary of the Board.

The Special Committee voted unanimously to approve the following declaration of policy:

In the light of the decision of the Supreme Court of the United States in *Bolling* v. *Sharpe*, the Board of Education of the District of Columbia, believing it to be in the best interest of all citizens of the community of Washington, and necessary to the effective administration of an integrated system within the public schools, hereby adopts the following declaration of policy:

1. Appointments, transfers, preferments, promotions, ratings, or any other matters respecting the officers and employees of the Board shall be predicated solely upon merit and not upon race or color.

2. No pupil of the public schools shall be favored or discriminated against in any matter or in any manner respecting his or her relationship to the schools of the District of Columbia by reason of race or color.

3. Attendance of pupils residing within school boundaries, hereafter to be established, shall not be permitted at schools located beyond such boundaries, except for the most necessitous reasons or for the public convenience, and in no event for reasons related to the racial character of the school within the boundaries in which the pupil resides.

4. The Board believes that no record should be kept or maintained in respect to any pupil not enrolled in a public school on or prior to June 17, 1954, or in respect to any officer or employee not employed within

the system on or prior to that date in which information is solicited or recorded relating to the color or race of any such person.

5. That the maximum efficient use shall be made of all physical facilities without regard to race or color.

In support of the foregoing principles, which are believed to be cardinal, the Board will not hesitate to use its full powers. It is pledged to a complete and wholehearted pursuit of these objectives.

We affirm our intention to secure the right of every child, within his own capacity, to the full, equal and impartial use of all school facilities, and the right of all qualified teachers to teach where needed within the school system. And, finally, we ask the aid, cooperation and goodwill of all citizens and the help of the Almighty in holding to our stated purposes.

The Special Committee recommends the approval by the Board of the above stated declaration of policy.

Respectfully submitted,

WALTER N. TOBRINER, *Chairman*
WESLEY S. WILLIAMS
ROWLAND F. KIRKS
Special Committee

EXHIBIT 2

SUPERINTENDENT OF SCHOOLS
Franklin Administration Building
Thirteenth and K Streets, NW.
Washington 5, D. C.

May 25, 1954

To the Board of Education
of the District of Columbia

Ladies and Gentlemen:

On Monday, May 17, 1954, the Supreme Court of the United States issued two opinions, one having to do with segregation in public schools in Kansas, South Carolina, Virginia, and Delaware, and the other with segregated schools in the District of Columbia. The first opinion declared that "such segregation is a denial of the equal protection of the laws" and the second opinion stated:

> 'In view of our decision that the Constitution prohibits the states from maintaining racially segregated public schools, it would be unthinkable that the same Constitution would impose a lesser duty on the Federal Government. We hold that racial segregation in the public schools of the District of Columbia is a denial of the due process of law guaranteed by the Fifth Amendment to the Constitution.'

The latter opinion also restored to the docket of the Court the case of *Brown* v. *the Board of Education* for further argument next fall on certain aspects of the suit. This opinion placed upon the Board of Education and the Superintendent of Schools the responsibility for accomplishing the complete de-segregation of all public schools in the District of Columbia.

The transition from a segregated to a de-segregated type of school organization requires definite administrative decisions and practices. To accomplish the transition in Washington as rapidly and effectively as possible, basic principles need to be established which will govern all administrative procedures necessary in complying with the opinion of the Court. The Superintendent and his staff state as a basic premise that the schools will hereafter operate as a single

system and that no reference will be made in any way to racial differences among its pupils or its employees.

The following general principles are calculated to make the best use of the total resources of the school system in plant and personnel, to serve the best interest of all the pupils, and to promote the general welfare of the community. To implement these principles, administrative attention must be directed toward steps which will assure the distribution of pupils and the assignment of employed personnel smoothly and expeditiously. These general principles are presented to the Board of Education for its consideration.

To the Board of Education
of the District of Columbia—2

May 25, 1954

1. *Complete de-segregation of all schools is to be accomplished with least possible delay.*

   De-segregation by grades or by levels would delay the process and would create administrative problems arising from confusion and inconsistencies.

2. *New boundaries are to be established for each school.*

   Definite boundaries will be established for each school to make the optimum use of the school by the pupils living in its immediate area.

   In sections of the city where schools are located very close to each other it will be impossible to set up separate boundaries for each school. In such instances, therefore, the boundaries will be for groups of schools rather than for individual schools.

   When the new boundaries have been established and the plan is in operation, adherence to the boundary limitations must be definite and without exception.

This does not mean, however, that there will be any change in the present practice of adjustments of any school boundaries by the Superintendent wherever changes in school population make such action necessary. These boundary readjustments during the period of transition to a de-segregated system will probably be more frequent than they are at present.

3. *Appointments and promotions of all school personnel are to be made on a merit system only and assignment will be in accord with the needs of the service.*

The tenure rights of individuals as to salary level and rank will be maintained.

The duties of some officers will necessarily be changed.

4. *The transition to a de-segregated system is to be accomplished by natural and orderly means.*

Artificial and immediate reassignments of large numbers of pupils, teachers, and officers would be disruptive and will be avoided.

SCHOOL BOUNDARIES AND DISTRIBUTION OF PUPILS

One very significant aspect of the process of de-segregation is that concerned with the distribution of pupils among the various schools. It is evident that the reasonable and proper criteria for this distribution are:

1. the optimum use of all school buildings, and
2. the optimum accessibility of school buildings to the residences of pupils.

These criteria necessarily require the establishment of definite zones to be served by each school or group of schools. The teachers colleges and the vocational and technical high schools because they are specialized in nature will continue to be city-wide in their services. In establishing zones for the optimum use of all school buildings, the objective will be to assign to each given school or group of schools an area calculated to give each building its fair share of the total pupil load in relation to its capacity.

Although it will not be possible to avoid all traffic hazards or to assure convenient public transportation in every case in considering the accessibility of a school account will be taken of these factors as well as the factor of distance to be travelled by the pupils.

To facilitate the establishment of proper boundaries for all school buildings on a de-segregated basis, the residence cards for all pupils now in the Washington public schools have been set up on the IBM accounting machines according to city blocks, by grade levels, and by schools now attended. In addition thereto each building principal is preparing a spot map to indicate the places of residence of all his pupils. The officers charged with the responsibility of establishing the boundaries will then be able to determine the number of pupils now enrolled in the schools who live in any given city block. They will also know the grade level and the school last attended by each pupil. The compilation of these data will assist in the establishment of the boundary limitations.

In order to provide stability, continuity, and security in the educational experiences of pupils during the transition period, it is agreed that it will be educationally sound to permit pupils at present enrolled in any school to continue in that school even though they are not living within the new boundaries. By this means immediate displacement of unnecessarily large numbers of pupils will be avoided. Progressively with the establishment of new boundaries all children will attend the schools serving the areas in which they live.

The following procedures will be needed to carry out this plan:

1. Fixed zones are to be established for each elementary, junior high and senior high school to insure balanced use of school facilities.

2. All pupils new to the school system or to a particular school level will be assigned to the schools designated to serve the zones in which they live.

To the Board of Education
of the District of Columbia—4

May 25, 1954

3. All pupils at present enrolled in a given school may remain until graduation provided the school is not overcrowded and provided the priority rights of pupils within the new boundaries of the school are not denied. If they prefer they may transfer to the school serving the zone in which they live. Elementary school pupils who change residence will be transferred to the school assigned to the area of the new residence.

4. Transfers from one school to another will be required when necessary to relieve overcrowded conditions.

In order to demonstrate how these procedures will operate, the Superintendent suggests that the cases of the boundaries of two hypothetical schools (elementary, junior high or senior high) be considered: School "A", formerly a Division 1 school, and School "B", formerly a Division 2 school, serving areas within their new boundaries on a desegregated basis, the two areas being contiguous.

By the application of the foregoing procedures what children must attend and what children may attend School "A"?

These *must* attend School "A"

1. All children living within the new boundaries who formerly attended School "A".
2. All children living within the new boundaries who are entering a school of that level for the first time.
3. All children who are newly residing in the area served by School "A".
4. Children now attending School "B" but living within the boundaries of School "A" if School "B" becomes overcrowded.

Those who *may* attend School "A"

1. Children now enrolled in Schol "A" whether or not their residence is within the boundaries of School "A" may continue to attend until their graduation subject to the following conditions:
   a. if School "A" becomes overcrowded, pupils previously attending School "A" who live in the area now served by School "B" or any other school will be transferred to that school.
   b. if further relief from overcrowding is necessary after all children not living in the area served by School "A" have been transferred, it will then be necessary to provide additional relief by further changing the boundaries of School "A".

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2. Any child living in the area of School "A" may attend that school if he so desires even though he may now be enrolled in School "B" or in some other school.

It should be noted that all children living within the boundaries of any given school will have first priority for attending that school.

These same regulations will apply to School "B", and to all other elementary, junior high or senior high schools in the city except those which are city-wide in their services.

The ultimate distribution of pupils strictly in accordance with established zones will be accomplished through the provisions of the principle that all pupils entering the elementary, junior high, or senior high schools for the first time shall be assigned to the schools designated to serve the zones of their residences. This applies equally to pupils entering the first grade, pupils promoted to junior high or senior high schools, pupils entering the Washington Public Schools for the first time, and pupils transferring from one area of the city to another.

Finally, authority for the placement of all pupils must be vested in the Superintendent of Schools and his staff, who will administer the plan within the framework of the policies enunciated by the Board of Education.

ASSIGNMENT OF EDUCATIONAL EMPLOYEES

A second major aspect of the process of de-segregation is that dealing with the distribution of the teachers, including librarians and counselors. The following procedures are recommended to govern the assignment of these employees. Here again it is felt that once policies are established through formal action of the Board of Education the school administration shall then be vested with final authority for determining the placement of school employees.

1. *Teachers now in service.*

   In general these employees will remain in their present assignments subject to the following conditions.

a. They will be transferred only to meet the needs of the service and then only within the level and/or the subject matter fields of their preparation and experience.
b. When vacancies occur or when there is need for additional teachers in a given school, assignments to that school will be determined in accordance with the best use of available personnel. As is true at

present, a controlling consideration in the placement of personnel will be the general fitness and adaptability of an individual for a particular situation.
c. Requests of teachers for transfers will be honored as at present if the transfers are in accordance with the needs of the overall school organization.

2. *Appointment and placement of teachers new to the service.*

a. All appointments of teachers will be made from rated lists resulting from examinations to be held by a single Board of Examiners.
b. All assignments of new personnel will be in accordance with the needs of the service.

Another important aspect in the de-segregation process is the assignment of field officers. Since most of them are specialists in their field it is essential that consideration be given their training and experience.

1. *Principals and Assistant Principals now in service.*

The procedure for the assignment of assistant principals and principals now in the service will be the same as that prescribed for teachers.

2. *Directors, Assistant Directors, Heads of Departments, and other field officers.*

   Directors, assistant directors, and heads of departments, who at present serve the system on a divisional basis will be assigned to duties in the same fields of work on a city-wide basis. The duties of most of these positions fall logically into large areas, such as administration, supervision and improvement of instruction, and curriculum revision. Each of these officers will be assigned to some such area in his field on a city-wide basis and will serve all levels of the system.

3. Personnel in special departments and officers now operating on a divisional basis will be reassigned on a city-wide basis.

4. Newly appointed officers in these groups will be selected according to merit under the existing procedures for the selection and promotion of persons for officer positions, but on a system-wide basis.

The Superintendent is not yet prepared to make recommendations as to any formal changes in the functions of the

officers on his staff. The work involved in accomplishing desegregation in so large a school system will require the closely-knit and joint efforts of all these officers for a considerable period of time. They have been engaged in working out the detailed preparation of this plan and it will require their continued cooperative efforts in its inauguration. The responsibilities and duties of such officers as the Assistant to the Superintendent in charge of Business Administration, the Associate Superintendent in charge of Buildings and Grounds, and the Associate Superintendent in

charge of Personnel are already city-wide in scope. The work which is at present the responsibility of the officers in charge of instruction and school administration and of educational research will in no wise be lessened by the change in the school system. It is the plan of the Superintendent to assign these officers eventually to duties that will be broadened and on a system-wide basis and which will provide opportunity for the initiation of new services and the development of others not at present sufficiently emphasized. These reassignments will result in considerably improved supervisory and administrative practices in the classrooms of all levels.

PROPOSED SCHEDULE

To begin the implimentation of the plan to de-segregate the public schools of the District of Columbia, the Superintendent proposes the following tentative schedule:

By September, 1954—

Completion by the building principals and their supervisory officers of the establishment of new boundaries for all schools except those that will continue to function on a city-wide basis.

Relief of present urgent situations in:

1. Elementary Schools

   a. To relieve overcrowding transfer a sufficient number of pupils:

      from the Slowe and Noyes Schools to the Woodridge, Langdon, and Burroughs Schools

      from the Bruce, Monroe, and Park View Schools to the Raymond, Petworth, Barnard, and Rudolph Schools

      from the Madison, Maury, and Lovejoy Schools to the Kingsman, Edmonds, and Blair Schools

from the Taylor, Hayes and Ludlow Schools to the Wheatley School

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from the Bryan and the Payne Schools to the Buchanan School.

from the River Terrace School to the Benning School.

b. To vacate the Military Road School, no longer needed for classrom purposes, transfer the pupils from that school to the Brightwood School.

2. Junior High Schools

a. To alleviate overcrowding transfer pupils:

from the Randall Junior High School to the Jefferson Junior High School

from the Browne, Eliot, and Langley Junior High Schools to the Eastern Junior-Senior High School

from the Kelly Miller Junior High School to the Sousa Junior High School.

NOTE: These transfers of elementary and junior high school pupils are proposed by the Superintendent because of almost emergency situations and in his opinion are deserving of approval at this time at first steps in the compiete de-segregation process. He feels that no cases beyond these should be considered at this time.

3. Senior High Schools

Begin the merging of the McKinley and Armstrong Technical High Schools by transferring to McKinley students in such courses as can be accommodated in the present classroom and shop facilities.

NOTE: The complete merger of these two schools will depend upon appropriation of necessary funds for construction and moving and purchase of equipment.

4. Teachers Colleges

While there is no urgent situation in the college enrollments, it is proposed that both Wilson and Miner Teachers College be opened to qualified students regardless of race and that the two institutions plan special course offerings so

that students in either one will be able to take advantage of such offerings in the other. A complete merging of the colleges cannot be accomplished at this time since there is not at present any building available which can accommodate so large an institution.

Attention is called to the fact that the suggestions proposed above providing for de-segregation in certain areas of the school system are in advance of any present requirement of the Supreme Court Opinion.

After the opening of the schools in September, the Superintendent will continue as rapidy as possible with the whole

program, taking into consideration the necessary steps, the most important of which are listed below:

1. Assigning pupils to schools on basis of new boundaries.
2. Preparing Board Orders for changed assignments of teachers and officers where necessary.
3. Carrying on programs of in-service training in intercultural relationships for all employees.
4. Conducting examinations based on amended legislation.
5. Establishing new eligible lists for teacher appointments.
6. Replanning city-wide student activities, such as sports, cadets, student government, and musical activities.
7. Relocating all field officers now occupying space which will be required for classroom use.
8. Making adjustments in allotments for postage, stores—clerks, and evening schools.
9. Moving furniture and classroom equipment.
10. Arranging for adjustments in the delivery of classroom supplies and textbooks to meet changed school enrollments.
11. Recommending to the Board necessary changes in its rules.

If the Board approves the Superintendent's plan and if there are no such setbacks as the failure to secure such legislative changes as the Corporation Counsel deems necessary or to secure funds that may be necessary to accomplish the physical changes in schools and in the redistribution of classroom equipment and supplies, the Superintendent feels

that he can complete the changeover to a de-segregated system by September, 1955.

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of the District of Columbia—10

May 25, 1954

It is the belief of the Superintendent that he cannot in September go beyond the steps outlined in this report because of the lack of sufficient time before the close of school in June as the presence of pupils, teachers and officers is essential to the carrying out of these plans. The official school calendar specifies June 17, as the last day for pupils; June 18, as the last day for teachers; and July 1 through August 31, as the summer vacation period for field officers. The field officers are, of course, subject to call during this vacation period if their services are needed.

The Superintendent submits this report for the consideration of the Board and recommends its approval. For the convenience of the Board he recapitulates below the specific recommendations that will require Board approval before he can begin the administrative steps looking to the actual de-segregation of the public schools of the District of Columbia:

1. As a basic premise, that the public schools operate hereafter as a single system without reference of any kind to or consideration of racial differences among its pupils or its employees.

2. That complete de-segregation be accomplished with the least possible delay according to the suggested schedule steps.

3. That the transition to a de-segregated system be made by natural and orderly means.

4. That new boundaries be established for each school to provide the optimum use of all buildings and the

optimum accessibility of schools to the places of residence of pupils.

5. That the assignments of pupils to schools be made on the basis of the steps outlined in the section, "School Boundaries and Distribution of Pupils," and according to the calendar established in the schedule.

6. That all appointments, promotions, and assignments of school personnel be made on the basis of merit only and in accordance with the needs of the service.

7. That the assignments of teachers, librarians, counselors, and field officers be made according to the policies outlined in the section, 'Assignment of Educational Employees.'

8. That members of the Superintendent's immediate staff continue in their present assignments until the whole process of de-segregation has proceeded sufficiently far to enable the Superintendent to present his plan for the reorganization of his staff including such changed duties as he then finds expedient.

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May 25, 1954

9. That a schedule be set up providing by September, 1954, for the establishment of new boundaries for all schools; the closing of the Military Road School; the relief of pupil-overcrowding in those elementary schools and junior high school listed in the schedule on pages 7 and 8; the beginning of the merging of the McKinley and Armstrong Technical High Schools; the opening of both Teachers Colleges on a de-segregated basis; and by September, 1955, the complete de-segregation of all schools in the system.

The Superintendent further recommends that he be authorized to prepare an estimate of funds to be sought through appropriation covering such expenses as will be incurred in the de-segregation process that can not be met from funds already appropriated.

The Superintendent is submitting a separate report covering amendments to existing legislation which he considers necessary to the de-segregation program.

Respectfully submitted,

Hobart M. Corning
Superintendent of Schools

EXHIBIT 3

SUPERINTENDENT OF SCHOOLS
Franklin Administration Building
Thirteenth and K Streets, NW.
Washington 5, D. C.

June 23, 1954

To the Board of Education
of the District of Columbia

Ladies and Gentlemen:

The Superintendent submits the following calender of dates for the steps that have been or are to be taken to complete the program of de-segregation of the public schools of the District of Columbia

STEPS IN DE-SEGREGATION PROGRAM ALREADY ACCOMPLISHED

June 8 Temporary reorganization of the two Boards of Examiners into one Board under the direct chairmanship of the Superintendent.

June 10, 11, 12 Teacher examinations for elementary, junior high, and vocational high schools on a completely integrated basis.

June 11 Notices sent to all high school principals announcing that both Miner and Wilson Teachers Colleges are receiving applications for admission in September from any qualified person, regardless of race.

June 11 Instructions issued to Heads of Departments of Military Science and Tactics to prepare and submit suggested plan for integration of cadet program for 1954-55 school year.

June 14 Meeting of First Assistant and Associate Superintendents concerned, Directors of Health, Physical Education, Athletics, and Safety, and Directors of Athletics to discuss all sports programs for 1954-55 school year. Directors of Athletics to report back on June 24 with suggested schedules.

To the Board of Education
of the District of Columbia—2

June 23, 1954

June 14 First field officer examination announced on a city-wide basis (five such announcements issued to date).

June 15 Completion of tabulation and listing of data from registration cards for approximately 100,000 pupils.

June 17 Preliminary steps completed to effect transfers of pupils in elementary, junior high, and senior high schools listed in Superintendent's report of May 25. (Proposed Schedule, pp. 7-8.)

June 23 Revised legislative language submitted to the Board covering necessary amendments to existing law because of Supreme Court decision—

Concerning First Assistant Superintendents

Concerning Chief Examiners

Concerning Boards of Examiners

Concerning School Censuses

STEPS IN DE-SEGREGATION PROGRAM TO BE ACCOMPLISHED

July 1 Superintendent to submit to Board maps and descriptive data to show new boundary lines for all elementary, junior high, and senior high schools.

All necessary data concerning new boundaries to be furnished school principals and press to insure publicity reaching all school personnel and patrons.

July 1 Superintendent to submit recommendations for merging of all lists of persons eligible for appointment to all teacherships on all levels.

July 6 Completion of estimate for 1956 budget for funds needed to convert McKinley High School to a modern technical school to permit the eventual closing of the present Armstrong Technical High School.

To the Board of Education
of the District of Columbia—3

June 23, 1954

September 1* Use of new boundaries on all levels for all pupils new to the public schools including kindergarten and first grade pupils entering the public schools for the first time.

September 13* Evening schools to open for operation on an integrated basis.

September 13* Transfers of selected Division 2 elementary school pupils who because of present boundaries are required to travel excessive distances where there are

present Division 1 schools near their homes. This is possible as it involves a limited number of pupils and in no instance will require reorganization in a school receiving pupils or the transfer of furniture or equipment.

Any similar cases on the secondary level will be considered on an individual basis.

September 13 Pupil changes indicated by the following table:

ELEMENTARY SCHOOLS

Pupils to be transferred from 12 schools in Division 2 to 14 schools in Division 1		Estimated number of pupils to be transferred	Resulting number of pupils in integrated schools based on June enrollments**
FROM	TO		
Bruce	Barnard		
Bryan	Benning		
Hayes	Blair		
Lovejoy	Brightwood		
Madison	Buchanan		
Maury	Burroughs		
Military Road	Edmonds		
Noyes	Kingsman	1503	6341
Park View	Langdon		
River Terrace	Petworth		
Slowe	Raymond		
Taylor	Rudolph		
	Wheatley		
	Woodridge		

* This step has not previously been reported to the Board

** This number does not include the schools which are integrated by the admission of pupils new to the school system and the new kindergarten and first grade pupils.

To the Board of Education
of the District of Columbia—4

June 23, 1954

Transfer of special cases of pupils travelling excessive distances to schools nearer their homes (18 schools)		Estimated number of pupils to be transferred	Resulting number of pupils in integrated schools based on June enrollments**
Bancroft	Patterson		
Congress Heights	Powell		
Eaton	Randle Highlands		
Hearst	Rudolph		
Janney	Simon	96	9603
Key	Stoddert		
Lafayette	Truesdell		
Orr	Tyler		
Oyster	West		

JUNIOR HIGH SCHOOLS

Pupils to be transferred from 5 junior high schools in Division 2 to 3 junior high schools in Division 1			
FROM	TO		
Browne	Eastern Jr. - Sr.		
Eliot	Jefferson	344	3050
Langley	Sousa		
Miller			
Randall			

SENIOR HIGH SCHOOLS

Pupils to be transferred from Armstrong to McKinley High School		460	1230

** This number does not include the schools which are integrated by the admission of pupils new to the school system and the new kindergarten and first grade pupils

To the Board of Education
of the District of Columbia—5

June 23, 1954

	Estimated number of pupils to be transferred	Resulting number of pupils in integrated schools based on June enrollments**
TEACHERS COLLEGES		
Admission of applicants without regard to race		908
EVENING SCHOOLS		
Opening Evening Schools to all students		8677
Totals	2903	29809

September 13 Completion of building organizations including the transfer of teachers in some schools.

September 13 Completion of transfer of furniture and equipment and textbooks and classroom supplies between schools affected by pupil transfers.

October 1-15 Explain to all pupils the options provided either for remaining in present schools or transferring to new schools.

Hold meetings for parents of all children who are qualified to request options to explain the choices although no assurance can at that time be given whether the options can be approved for February 1 or for a later date.

Written statements to be filed not later than November 11 confirming all options requested. Sixth, ninth, and twelfth grade pupils not to be transferred.

The Superintendent repeats his desire to take such additional progressive steps as are consistent with the welfare of the children. He will, therefore, examine and tabulate all the written options that are filed to determine the numbers of pupils residing outside the new boundaries who wish to remain in their

** This number does not include the schools which are integrated by the admission of pupils new to the school system and the new kindergarten and first grade pupils.

present schools and the numbers of those who wish to transfer to the schools serving their residence areas. On the basis of these findings he will then make such changed pupil assignments as are found feasible without forced transfers at the beginning of the new semester in February.*

January 31, 1955* Assign all junior high school graudates to senior high schools on the basis of the new boundaries.

Make such additional teacher transfers and school reorganizations as are necessary.

Effect such transfers at all levels as may produce a better balanced use of all school facilities, and at the same time be consistent with the educational program of the children themselves.

Arrange for building changes and transfers of equipment and supplies as are necessitated by the changed pupil assignments.

February to June, 1955 Complete the processing of all options not acted upon for February with the consequent pupil transfer and reassignment of teachers on September 1, 1955.

Arrange for additional transfers of furniture and equipment and textbooks and supplies, where necessary.

September 1, 1955* The Superintendent announces one further important step in the integration process which is now presented. This will involve the closing of the Cardozo High School by June, 1955, and the merging of the Wilson and Miner Teachers Colleges in the present Cardozo building in September, 1955. The rezoning of the senior high schools has revealed such an overage of seating space that Cardozo can be closed and the pupils accomodated in the remaining senior high schools, freeing the Cardozo building for college use. It is planned also at the same time to open a junior high schol unit in the same building to serve as a laboratory school for the new merged college. The Superintendent will submit a subsequent and more detailed report on this new plan.

*This step has not previously been reported to the Board

To the Board of Education
of the District of Columbia--7

June 23, 1954

As the Superintendent studies the entire process of integration and discovers additional steps which can be taken he will advise the Board of Education.

September 1, 1955 All steps will have been taken to complete de-segregation of the public schools. Technically, de-segregation will have begun in all schools in September, 1954, since the admission of all pupils including kindergarten and first-grade pupils new to the public schools will be on the basis of the new boundaries. All senior high schools will, in addition, be further integrated by the admission of all junior high school graduates in February, 1955, on the basis of the new boundaries.

The Superintendent recommends that the Board of Education approve this schedule and authorize the Superintendent to proceed administratively to carry out the various steps enumerated.

Respectfully submitted,

/s/ H. M. Corning,

Hobart M. Corning
Superintendent of Schools.

EXHIBIT 4

SUPERINTENDENT OF SCHOOLS

Franklin Administration Building

Thirteenth and K Streets, N. W.

Washington 5, D. C.

POLL OF BOARD

September 8, 1954

To the Board of Education
of the District of Columbia

Ladies and Gentlemen:

The declaration of policy on the question of integration in the Public Schools of the District of Columbia approved by the Board on May 25, 1954, contains the following statement:

> "The Board believes that no record should be kept or maintained in respect to any pupil not enrolled in a public school on or prior to June 17, 1954, or in respect to any officer or employee not employed within the system on or prior to that date in which information is solicited or recorded relating to the color or race of any such person."

As the opening of the fall school term approaches, the inquiries as to the practical effects of integration in our schools are multiplying rapidly. Thus far we have stated that under the Board's adopted policy no record can be made available of the numbers of pupils or teachers by race.

It is doubtful whether any damage would be caused by releasing these numbers during this transitional stage. It is also doubtful whether it is to the public interest to refuse to furnish such information. The School Attendance Law requires that race be recorded for every pupil and the Board will recall that the Corporation Counsel opposed the request that this legislation be amended to discontinue recording of race.

The Superintendent recommends therefore that the Board suspend the operation of the above quoted portion of its declaration of policy to authorize him to record and release data showing the effects of integration in the public schools so far as the numbers of students and teachers are concerned, the suspension of the above quoted portion of the declaration of policy of the Board as to students to remain in effect until existing legislation is repealed or new legislation is enacted to support the Board's policy and the suspen-

sion of the above quoted portion of the declaration of policy of the Board in respect to the enumeration of teachers to be in effect until further action of the Board.

Respectfully submitted,

(signed) H. M. Corning

Hobart M. Corning
Superintendent of Schools

(Mr. Sharpe out of town)
(signed) Arcadia Near Phillips
(signed) Wesley S. Williams
(signed) Mary H. Parker
(signed) West A. Hamilton
(signed) Walter N. Tobriner
(signed) Robert R. Faulkner
(signed) Margaret Just Butcher

(Dr. Kirks out of town)

Approved by the Board of Education by poll of board completed September 10, 1954.

Attest: Elise Z. Watkins
Secretary, Board of Education

EXHIBIT 5

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1954

No. 4

SPOTTSWOOD THOMAS BOLLING, ET AL.,
Petitioners,

v.

C. MELVIN SHARPE, ET AL., Respondents.

AFFIDAVIT OF HOBART M. CORNING, SUPERINTENDENT OF SCHOOLS, D. C.

DISTRICT OF COLUMBIA, *ss:*

Personally appeared Hobart M. Corning, who, being first duly sworn, on oath deposes and says:

I am Superintendent of Schools of the District of Columbia and one of the respondents in the above-entitled cause. After the decision of May 17, 1954 in the above matter, the Board of Education, on May 25, 1954, approved a declaration of policy concerning the question of integration in the public school system of the District. (Exhibit 1). Thereafter, by Board action on September 8, 1954, paragraph 4 of the declaration of policy was suspended because it was found to be in conflict with an Act of Congress. (Exhibit 6). On the same date that the Board of Education adopted the declaration of policy above referred to, I submitted a report containing a general plan for desegregation of the schools. (Exhibit 2). My report was approved by the Board of Education on June 2, 1954.

On June 23, 1954 I submitted to the Board of Education a report containing a schedule of dates for the various steps in the program of desegregation of the schools, (Exhibit 3), which report was approved by the Board on that same date.

Soon after the opening of schools on September 13, 1954, I found that available classroom space permitted the taking of some of the steps in the integration program scheduled for February 1, 1955, and, in accordance with general authority, given me by approval of the general integration plan, to accelerate the time schedule, such steps were taken. This acceleration will not, however, result in completion of the program prior to September 1, 1955.

/s/ Hobart M. Corning
Hobart M. Corning

Subscribed and sworn to before me this 12th day of November, 1954.

Adam A. Giebel,
Notary Public, D. C.

EXHIBIT 6

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1954
No. 4

SPOTTSWOOD THOMAS BOLLING, ET AL.,
Petitioners,
v.
C. MELVIN SHARPE, ET AL., Respondents.

AFFIDAVIT OF C. MELVIN SHARPE, PRESIDENT, BOARD OF EDUCATION

DISTRICT OF COLUMBIA, *ss:*

Personally appeared C. Melvin Sharpe, who, being first duly sworn, on oath, deposes and says:

I am President of the Board of Education of the District of Columbia and one of the respondents in the above-entitled cause. The declaration of policy and the reports outlined in the affidavit of Dr. Hobart M. Corning (Exhibit 4) were considered by the Board of Education on the dates indicated therein and were approved as therein indicated.

Although there was a wide divergence of opinion amongst the members of the Board of Education concerning both the plans submitted to them by the Superintendent and the subsequently submitted time-schedule therefor, and sharp discussion took place in several of the Board meetings concerning both of these reports, said reports, as well as the "statement of principles" prepared by a committee of the Board, were adopted by Board action, and have been set into operation. There is still no unanimity of opinion among Board members that the plan submitted and the time schedule prepared by the Superintendent are the best that could be de-

vised. The principal objection at this point, by a minority of the Board, is that the transition is too rapid. Notwithstanding this view, the program of integration of the schools has been in effect since the opening of schools for the current term on September 13, 1954—indeed, much of the preparatory work for the commencement on that date of instruction on an integrated basis was accomplished prior thereto.

Since classes started, although some of the students in four or five schools on the junior high and high school levels expressed in a comparatively orderly manner for a period of a few days their emotions against integration, the program has proceeded, and integrated classes have been operating without incident.

/s/ C. Melvin Sharpe

C. Melvin Sharpe

Subscribed and sworn to before me this 12th day of November, 1954.

ADAM A. GIEBEL,
Notary Public, D. C.

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HAROLD B. WILLEY, Clerk

IN THE

Supreme Court of the United States

October Term, 1954. No. 5.

FRANCIS B. GEBHART, WILLIAM B. HORNER, EUGENE H. SHALLCROSS, JESSE OHRUM SMALL, N. MAXSON TERRY, JAMES M. TUNNELL, Members of the State Board of Education of the State of Delaware, GEORGE R. MILLER, JR., State Superintendent of Public Instruction of the State of Delaware, ALFRED EUGENE FLETCHER, GEORGE CLIFFORD JOHNSON, SAGER TRYON, EARL EDWARD ROWLES, Members of the Board of Education of the Claymont Special School District, HARVEY E. STAHL, and HAIG KUPJIAN,

Petitioners,

v.

ETHEL LOUISE BELTON, an Infant, by Her Guardian ad Litem, ETHEL BELTON, ELBERT JAMES CRUMPLER, an Infant, by His Guardian ad Litem, JOSEPH CRUMPLER, RICHARD LEON DAVIS and JOHN TERRELL DAVIS, Infants by Their Guardian ad Litem, JOHN W. DAVIS, SPENCER W. ROBINSON, an Infant, by Her Guardian ad Litem, WILLIE ROBINSON, STYRON LUCILLE SANFORD, an Infant, by Her Guardian ad Litem, EMMA FOUNTAIN, ALMENA A. SHORT, an Infant, by Her Guardian ad Litem, JOHN SHORT, MYRTHA DELORES TROTTER, an Infant, by Her Guardian ad Litem, HARLAN TROTTER, ETHEL BELTON, JOSEPH CRUMPLER, JOHN W. DAVIS, WILLIE ROBINSON, EMMA FOUNTAIN, JOHN SHORT, and HARLAN TROTTER,

Respondents.

FRANCIS B. GEBHART, WILLIAM B. HORNER, EUGENE H. SHALLCROSS, JESSE OHRUM SMALL, N. MAXSON TERRY, and JAMES M. TUNNELL, Members of the State Board of Education of the State of Delaware, GEORGE R. MILLER, JR., State Superintendent of Public Instruction of the State of Delaware, GORDON F. BIEHN, FREDERICK H. SMITH, HENRY C. MITCHELL, and ETHEL C. McVAUGH, Members of the Board of School Trustees of Hockessin School No. 29,

Petitioners,

v.

SHIRLEY BARBARA BULAH, an Infant, by Her Guardian ad Litem, SARAH BULAH, FRED BULAH and SARAH BULAH,

Respondents.

BRIEF FOR PETITIONERS ON THE MANDATE.

H. ALBERT YOUNG,
Attorney General of the State of Delaware.
CLARENCE W. TAYLOR,
Deputy Attorney General of the State of Delaware.
ANDREW D. CHRISTIE,
Special Deputy to the Attorney General.

International, 236 Chestnut St., Phila. 6, Pa.

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IN THE

Supreme Court of the United States.

OCTOBER TERM, 1954. No. 5.

Francis B. Gebhart, William B. Horner, Eugene H. Shallcross, Jesse Ohrum Small, N. Maxson Terry, James M. Tunnell, Members of the State Board of Education of the State of Delaware, George R. Miller, Jr., State Superintendent of Public Instruction of the State of Delaware, Alfred Eugene Fletcher, George Clifford Johnson, Sager Tryon, Earl Edward Rowles, Members of the Board of Education of the Claymont Special School District, Harvey E. Stahl, and Haig Kupjian,
Petitioners,

v.

Ethel Louise Belton, an Infant, by Her Guardian ad Litem, Ethel Belton, Elbert James Crumpler, an Infant, by His Guardian ad Litem, Joseph Crumpler, Richard Leon Davis and John Terrell Davis, Infants by Their Guardian ad Litem, John W. Davis, Spencer W. Robinson, an Infant, by His guardian ad Litem, Willie Robinson, Styron Lucille Sanford, an Infant, by Her Guardian ad Litem, Emma Fountain, Almena A. Short, an Infant, by Her Guardian ad Litem, John Short, Myrtha Delores Trotter, an Infant, by Her Guardian ad Litem, Harlan Trotter, Ethel Belton, Joseph Crumpler, John W. Davis, Willie Robinson, Emma Fountain, John Short, and Harlan Trotter,
Respondents.

Francis B. Gebhart, William B. Horner, Eugene H. Shallcross, Jesse Ohrum Small, N. Maxson Terry, and James M. Tunnell, Members of the State Board of Education of the State of Delaware, George R. Miller, Jr., State Superintendent of Public Instruction of the State of Delaware, Gordon F. Biehn, Frederick H. Smith, Henry C. Mitchell, and Ethel C. McVaugh, Members of the Board of School Trustees of Hockessin School No. 29,
Petitioners,

v.

Shirley Barbara Bulah, an Infant, by Her Guardian ad Litem, Sarah Bulah, Fred Bulah and Sarah Bulah,
Respondents.

BRIEF FOR PETITIONERS ON THE MANDATE.

STATUS OF THE CASES.

Petitioners seek review of final judgments of the Supreme Court of the State of Delaware affirming orders of the Court of Chancery of the State of Delaware. Petitioners are members of the Board of Education of the State of Delaware and of the Boards of Education of Claymont Special School District and Hockessin School District #29. The provision from which petitioners seek relief is the same in both cases and is as follows:

> "That . . . the defendants and each of them, their agents and employees are enjoined from denying to infant plaintiffs and others similarly situated, because of color or ancestry, admittance as pupils in the . . ." (designated schools).

This Court heard oral argument on December 11, 1952. Petitioners, pursuant to leave of the Court filed a brief on December 31, 1952.

On June 8, 1953, this Court ordered the case restored to the docket and assigned for reargument. The subject matter of the reargument was directed to the history and construction of the Fourteenth Amendment and the relief to be granted.

This Court heard oral argument, and at that time it was pointed out that the Delaware cases are before this Court on the narrow issue of the type of relief which should have been granted. In other words, where there had been a finding of inequality, does the Fourteenth Amendment require immediate admission of respondents to schools maintained for white children?

By its decision of May 17, 1954, this Court struck down the principle of "separate but equal" educational facilities.

In the Fall of 1952, respondents, in compliance with the order of the Chancellor, as affirmed by the Supreme Court of Delaware,[1] were granted admission to the respective

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1. *Gebhart v. Belton*, — Del. Ch. —, 91 A. 2d 137.

white schools. These respondents have remained in those schools or have completed their education according to that order. The admission of the negro children to those schools has taken place without incident. The request to afford the State a reasonable period of time within which to equalize the facilities in those two specific districts is no longer before the Court.

PRELIMINARY.

This Court by decision of May 17, 1954 disposed of the constitutional issues involved in the several cases before it.

The Court reserved for further consideration the question of the type of relief to which the successful parties are entitled. The parties have been requested to present further argument on questions previously propounded dealing with the power and propriety of effecting a gradual adjustment to non-segregated public education and the forum best suited to the administration of such relief.[2]

This brief is submitted in compliance with the Court's request. It is directed to (1) a factual review of the Delaware educational system, the experience of this State in its efforts to effect desegregation since this Court's decision of May 17, 1954, the degree of social acceptability or unacceptability of desegregation in Delaware, and (2) a discussion of the legal precedents and policy considerations by which this Court should be governed in disposing of the cases before it.

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2. *Brown v. Board of Education of Topeka*, 347 U. S. 483, 98 L. ed. (Advance p. 583), 74 S. Ct. 686. Footnote 13. "4. Assuming it is decided that segregation in public schools violates the Fourteenth Amendment. "(a) would a decree necessarily follow providing that, within the limits set by normal geographic school districting, Negro children should forthwith be admitted to schools of their choice, or "(b) may this Court, in the exercise of its equity powers, permit an effective gradual adjustment to be brought about from existing segregated systems to a system not based on color distinctions? "5. On the assumption on which question 4 (a) and (b) are based, and assuming further that this Court will exercise its equity powers to the end described in question 4 (b), "(a) should this Court formulate

FACTUAL BACKGROUND IN DELAWARE.

I. School System as It Existed Prior to the Decision in This Case.

(A) *Legal Basis.*

The Constitution of the State of Delaware adopted in 1897, states that "the General Assembly shall provide for the establishment and maintenance of a general and efficient system of free public schools."[3] The Constitution provides for equitable apportionment of certain appropriations among the School Districts and further provides "that in such apportionment, no distinction shall be made on account of race or color, and separate schools for white and colored children shall be maintained".[4]

Since there is little additional detail in the Constitution, the Delaware education system is governed largely by statute.[5] The present pattern of education stems largely from the School Code of 1921[6] which was enacted after lengthy study. Prior to that date schools were in general locally run from local funds.[7]

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detailed decrees in these cases: "(b) if so, what specific issues should the decrees reach; "(c) should this Court appoint a special master to hear evidence with a view to recommending specific terms for such decrees; "(d) should this Court remand to the courts of first instance with directions to frame decrees in these cases, and if so, what general directions should the decrees of this Court include and what procedures should the courts of first instance follow in arriving at the specific terms of more detailed decrees?"

3. Delaware Constitution of 1897, Article X, Section 1.

4. Delaware Constitution of 1897, Article X, Section 2. The separate requirement also appears at 14 Del. Code, Section 141 (1953).

5. Title 14, Delaware Code (1953).

6. 32 Delaware Laws, Ch. 160 (1921).

7. For a careful legal history of Delaware education see Robert C. Stewart, *A Proposed Plan for the Reorganization of Administrative Units in the State of Delaware* (1948) an unpublished study.

(B) *State Board of Education.*

The general administration and supervision of the free public schools in Delaware is vested in the State Board of Education.[8] The Board consists of six residents appointed by the Governor from various parts of the State. No one subject to the authority of the Board may serve thereon, and the members receive only their expenses and twenty-five dollars per meeting.

The Board in turn appoints a Superintendent of Public Instruction who acts as Executive Secretary. The State Board employs a number of other executive officers, and administrative assistants. The State Board through its staff has almost complete charge of several important phases of the State system such as: education of handicapped children, student driving training and education of the handicapped. The Board makes the budget recommendations for all public schools to the State Budget Commission and to the General Assembly; it also must approve all capital improvements. But the State Board's most important function is the administrative and instructional supervision which it exercises in varying degrees over all the schools through its general powers.

(C) *Local School Districts for White Children.*

The entire State is divided into local districts for the education of white children and such districts have rather definite geographical boundaries. The boundary lines for the original districts were set more than a hundred years ago.[9] Frequent changes were made by statute until 1897 when the present State Constitution was adopted. The Constitution now forbids local or special laws relating to the creation or changing the boundaries of school districts.[10] Many consolidations and some changes in boundaries have

8. See generally Chapter 1, Title 14, Delaware Code (1953).
9. See Revised Code of Delaware, 1852, Chapter 42.
10. Delaware Constitution of 1897, Article II, Section 19.

taken place under various statutes of general application although such statutes make changes difficult.[11]

There remain, however, sixty-three local school districts in the State for the education of white children.[12]

Sixteen of the most populated local districts are known as "Special School Districts" and in such districts the local boards exercise a great deal more authority than do the other local boards in the State. The most important Special School District comprises the entire city of Wilmington. The Wilmington schools have always operated as an almost separate school system although they receive the same uniform State appropriations as do other schools.

Forty-seven of the local districts are known as "School Districts". Here the local boards act largely on behalf of the State Board and make fewer individual decisions.

Most of the local districts whether they are School Districts or Special School Districts, have certain characteristics in common. All have a school board made up of local residents who are responsible for maintaining the buildings and hiring all personnel for the school involved. All such boards receive uniform State appropriations and all are subject to a certain amount of general supervision from the State Board. In all cases the local board, after favorable referendum, may levy local taxes to supplement the funds received from the State. Most of the local boards are elected by the residents of the district but in most of the districts in New Castle County, including Wilmington, the boards are appointed by the resident judge of the Superior Court.[13]

Many of the local districts have no high school and the State Board arranges for high school education by setting up high school attendance areas which sometimes include several local districts. At present the local district

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11. 14 Del. Code (1953), Ch. 11.

12. Some of these are now integrated. See "Desegregation to Date", *infra*.

13. 14 Del. Code (1953), Chs. 3, 5, 7 and 9.

operating the high school bears whatever local cost there is for such high school and the other districts have no expense in connection therewith. In one case however, a large high school district was established to serve several local districts without being operated by the board of any of the districts served. Those served within the geographic area of that high school district are subject to local school taxes for the high school.

Several of the districts serve large and populated areas with more than one building and with a school superintendent as well as principals for each building. Such districts are in a position to adjust their educational program to some form of integration with less difficulty than are the eleven rural districts which still maintain schools with only one or two teachers.

The State Board has long recognized that greater educational opportunities as well as administrative economies would result from consolidation of many of the existing districts. Attempts to obtain local approval of such consolidations have met with frequent set-backs, and the General Assembly has refused to liberalize the statutory requirements for consolidation. It is apparent, therefore, that there is strong local opinion in many parts of the State against changing the current school arrangements. This opinion was frequently expressed long before integration played any part in such discussions.

(D) *Local School Districts for Colored Children.*

In addition to the sixty-three white districts discussed above there are forty-two School Districts which operate schools for colored children. These districts were developed at a later date than the white school districts and with less definite boundries.[14] Some colored districts exist entirely within white districts while others include parts of

14. Robert C. Stewart op. cit. p. 28.

two or more districts. Two of the colored high school districts include entire counties.[15] All of the colored schools operate within the uniform State appropriations and capital outlays are paid without local contributions. There is no attempt to collect local school taxes from colored residents except in Special School Districts. In other respects the colored school boards operate exactly as the white boards and the same statutes govern both. The school boards, whether they are white or colored, are made up of respected local citizens, many of whom oppose any change or consolidation.

The picture is further complicatead by the existence of several colored schools under the direct jurisdiction of white Special School Districts. In thirteen instances including the City of Wilmington, a single board operated both the white and colored schools of the district. Exhibit 1 lists all of the colored schools of the State and shows the complicated geographic and administrative relation of these districts and the white districts.

It is apparent that those Special School Districts which already operate separate schools for white and colored children are in the best position to integrate such schools with a minimum of administrative adjustment. Orderly integration can be more satisfactorily accomplished by reorganization of other school districts in the State. White or colored districts should cease to exist as such and new districts should be formed. Such reorganization would normally be a function of the State Legislature. Since the school laws are largely statutory rather than constitutional, a simple majority in the General Assembly with approval by the Governor would be sufficient to make the necessary changes. However, representation in the General Assembly is heavily weighted in favor of the less populated areas

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15. The William M. Henry Comprehensive School in Kent County and the William C. Jason Comprehensive School in Sussex County.

where consolidation of school districts in general has long been opposed.

Legislative reorganization of the public school districting in this State will permit a more orderly transition to a non-segregated public education system. However, the composition of the General Assembly is such that the majority of the members are elected from sections which are sincerely opposed to integration. Legislation which will aid in the integration of our public schools will be met with strong opposition. On the other hand, realization that integration is to become a reality, whether by court edict or legislative act, may result in enactment of legislation which will lessen the impact of this Court's decision in those areas where the dominant mood is opposed to integration.

(E) *School Finance.*

The State pays more than 90% of the operating expenses of the Delaware public schools. The balance is paid by the local school districts through local taxes. No other state government pays so large a percentage of the cost.[16] In the administration of these funds units of children are the basis of calculation and there is no differentiation based on color. There is a minimum salary schedule for teachers and other school personnel and these salaries are paid from State funds.[17] There are uniform State allowances to each district for all other expenses and such allowances are based on the number of pupils in attendance.[18] Transportation of pupils is provided at State expense.[19]

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16. *The Book of States 1954-1955,* Frank Smothers, Editor, The Council of State Governments (1953), p. 245.

17. 14 Del. Code (1953), Chapter 13.

18. The appropriations are based on "units of pupils" as defined in the statute. 14 Del Code (1953), Chapter 17.

19. 49 Delaware Laws, Chapter 217 at page 386; 14 Del. Code (1953), Chapter 29.

The most recent school construction program provides for improvements costing over $17,000,000, more than $12,000,000 of which is to be paid from State funds while local districts contribute about $5,100,000.[20] The colored school districts and many white districts have no local school taxes at all. Many of the white districts have had to levy local property taxes to amortize bonds issued to pay the local share of capital improvements. Some districts also levy taxes to supplement the State appropriations for general expenses and salaries.

Any reorganization of school districts will necessarily involve a rearrangement of the present local school tax picture. Attention must also be given to the bonded indebtedness of the various districts.

II. Desegregation to Date.

(A) *Progress.*

Since the decision of the Court, issued May 17, 1954, significant progress has been made toward abolishing segregation in parts of the Delaware public school system. Shortly after that decision, the State Board of Education sought the opinion of the Delaware Attorney General as to whether it could immediately set integration machinery in motion in those districts already prepared for desegregation or whether it was necessary to await the final mandate of the United States Supreme Court. The opinion of the Attorney General, dated June 9, 1954, held in effect that school districts could proceed with integration, in accordance with the decision of May 17, 1954 in this case, without doing violence to the constitution and laws of our own State and notwithstanding the fact that the mandate of the United

20. 49 Delaware Laws (1953), Chapter 337.

States Supreme Court had not yet been handed down.[21] (Exhibit 2).

As a result of the Attorney General's opinion, the State Board of Education developed and adopted Policy Statement I, as of July 11, 1954 (Exhibit 3). This granted permission to the Wilmington school authorities to move promptly into a partial integration program (See Exhibit 4). It urged that other school authorities together with interested citizen groups take immediate steps to formulate integration plans in the various districts and to submit these plans to the State Board of Education for review. The Policy Statement brought various phases of the problem to the attention of those concerned and pledged cooperation of the State Board with the local school units.

On August 19, 1954, the State Board of Education adopted Policy Statement II (Exhibit 5) which concerned the opening of schools in September, 1954. In this statement all schools with four or more teachers were requested to prepare and present tentative plans for integration in their area on or before October 1, 1954.

On August 26, 1954, the State Board of Education adopted Policy Statement III (Exhibit 6). This statement was designated to assist the local school authorities in their plans for integration by bringing to their attention various more specific items and suggestions which should be considered in connection with their plans.

Several school districts promptly submitted plans for partial or complete integration and the State Board of Education approved several such plans, effective at the beginning of the present school year, 1954-1955. Exhibit 7 shows that in areas containing about 28% of the total negro school population of the State, integration has been

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21. For similar holdings see: Opinion of John M. Dalton, Attorney General of Missouri, June 30, 1954; *Burr v. Board of School Commissioners of the City of Baltimore,* (Oral opinion, Judge James K. Cullen, October 5, 1954, in the Superior Court of Baltimore City, Docket 1954, Folio 830).

undertaken without incident. It should be observed, however, that most of the integration has been in the northern part of New Castle County where there is the greatest concentration of the population of the State. Furthermore an inspection of the districts involved would reveal that a comparatively small number of colored children are taking advantage of their right to attend schools which were formerly all white.

The significant fact is that voluntary steps toward desegregation have taken place in a number of districts on a partial basis and that the resultant integration has met with community acceptance.

(B) *Opposition.*

In the lower counties of the State the dominant mood is opposed to integration. Some of the school districts have made no plans looking toward eventual integration; other districts merely indicate a willingness to take whatever steps the court may direct. In the Laurel school district, located near the southern border of the State of Delaware, a public opinion poll conducted with the approval of the local school board registered 1258 to 31 against desegregation.[22]

At the beginning of the 1954-1955 school year, the Board of the Milford Special School District admitted ten Negro children to the tenth grade of the Milford High School. These pupils continued to attend the high school through September 17, 1954, a period of nine school days, without incident. On September 17, there was a mass meeting attended by about 1,500 persons who were opposed to the admission of the Negro children. The school session was dispensed with on September 20, 1954 in order that a special meeting of the parents of the school children and the members of the School Board could be held to discuss the prob-

22. The poll was held at the white school and only seven negro residents voted.

lem of the integration of the Negro children into the white schools.

A petition was presented to the local School Board requesting it to rescind its action in admitting the ten Negro pupils. The Milford School remained closed during the entire week beginning September 20th. The Board of the Milford Special School District resigned on September 23, 1954.

The feeling against the admission of these ten Negro children in the Milford Special School District continued to run high. Beginning on September 26, 1954, mass meetings were conducted by an organization known as the National Association for the Advancement of White People. A major objective of these meetings was the boycotting of all schools, and the Milford High School in particular, in order to bring pressure upon the local school authorities to remove the Negro children from the Milford High School and to prevent further action in lower Delaware directed toward integration. The meetings of the National Association for the Advancement of White People were designed to (1) incite anti-Negro feeling among white people, (2) inspire a willingness to commit violence in order to perpetuate segregation, and (3) to advocate violation of the State School Attendance Laws.

The State Board of Education reopened the Milford High School on September 27th with the ten colored children in attendance. On that day, crowds milled around the school, and some people took names of children that attended school. School attendance was only 456 pupils of 1,562 pupils enrolled. A motorcade of cars decorated with streamers and carrying placards reading "Send them back to Africa" and "Join the NAAWP" passed the school. Circulars were distributed among the crowds urging boycott of the Milford School. On September 29th, attendance in neighboring school districts dropped to a small fraction of their enrollment.

A new Board of the Milford Special School District, organized September 30th, removed the names of the colored students from the rolls of the Milford High School, thus compelling the Negro pupils to withdraw from the Milford High School and attend a colored school.

The President of the Board of Milford Special School District stated that:

> "Public demonstrations against the Negro students attending the white school were of such proportions that the schools were closed during the week of September 20 to September 24 inclusive and were reopened on September 27 by the State Board of Education and under its direction and supervision. Thereafter the public demonstrations increased and threats of violence were made, because of which school attendance dropped to approximately one-third, and the whole educational program of the Milford Special School District was disrupted.
>
> "On September 30, 1954, the Board of Education of the Milford Special School District notified all of said Negro students that their names had been removed from the rolls of the Milford High School. This action by the Milford Board of Education was done with a view of aiding and restoring law and order to the school district, in the interest of the educational program of the school district and for the general welfare of the entire student body, and was prompted particularly for the safety of the colored students." (Affidavit of Edmund F. Steiner, October 7, 1954); *Lillian Simmons v. Edmund F. Steiner, et al.,* Del. Ch. , 2 A. 2d .

Suit was immediately filed on behalf of the ten Negro children in the Delaware Court of Chancery requesting that the Board of the Milford Special School District be enjoined from denying admission to the Negro children.

The Attorney General appeared as *amicus curiae* and urged that the ten Negro pupils had acquired a status as students in the Milford High School by their admittance by the Milford School Board, and that a later Board could not expel them and, further, that the Negro children having acquired such status could not be expelled because of threats of violence and unlawful disruption of the public order.

The Court of Chancery in deciding the issue in the preliminary steps of the proceeding granted an injunction preserving the status of the Negro children as pupils in the Milford High School. Vice-Chancellor William Marvel stated:

> "Except for their names now being withdrawn from the records of the school, plaintiffs' position is no different than that of other Negro students of Delaware now attending partially integrated schools on the basis of their rights to equal protection under the Constitution of the United States. It would be unrealistic to maintain that these other students are unlawfully in school during the present phase of permissive integration.
>
> "I hold that plaintiffs, having been accepted and enrolled, are entitled to an order protecting their status as students at Milford High School; that their right to a personal and present high school education having vested on their admission, they need not wait for decrees in the cases decided by the United States Supreme Court in May as a prerequisite to the relief they seek." *Lillian Simmons v. Edmund F. Steiner, et al., supra.*

This case is now on appeal before the Delaware Supreme Court. By virtue of a stay granted by the Delaware Supreme Court, the ten Negro children presently attend a Negro High School located sixteen miles from the Milford High School.

(C) *Summary of Delaware's Situation.*

Although Delaware contains only three counties, the administration of its educational system is a complex mixture of centralized administrative and financial authority and autonomous local control. Partial desegration has progressed satisfactorily in all but one of the districts where it has been undertaken. In the lower part of the State there is strong opposition to immediate integration.

In certain areas in Delaware a gradual transition from a segregated school system to a non-segregated school system is necessary to insure permanency and community acceptance.

The events at Milford demonstrate that:

1. Public opinion in lower Delaware has been aroused against desegregation and that a significant percentage of the people in parts of Delaware are not ready to accept integration.

2. The immediate admission of Negro children to white schools under the old "separate but equal" doctrine is inconsistent with orderly gradual transition from separate to integrated schools in areas where such immediate admission is opposed by the local population. The decision of the Supreme Court of the State of Delaware makes immediate admission mandatory where separate facilities are not equal. Since many instances of unequal facilities may be presented to the courts for immediate relief under the "separate but equal" doctrine, gradual integration depends upon the time element to be provided for in this Court's mandate during this period of transition. The mandate of this Court should make it clear that, notwithstanding inequality of facilities, the local courts shall in the exercise of their equity powers be permitted to grant such relief as they deem proper after considerat on of the physical, economic and social conditions of the community and upon a showing of a bona fide effort directed toward orderly desegregation.

ARGUMENT—FORM OF MANDATE.

I. The Decree of the Court of Chancery, as Affirmed by the Supreme Court of the State of Delaware, Should Be Affirmed.

The two cases from the State of Delaware which are before this Court presented the question of the propriety of the Order of the Chancellor directing admission of Negro children to two public schools formerly restricted in accordance with the Constitution of the State of Delaware to white children where the Court found that the facilities available to the Negro students were not equal to those available to white students. The issue for determination by this Court was whether the proper decree should not have been one directing the authorities in charge of public education in the State of Delaware to equalize the separate facilities.

The decision of this Court in *Brown v. Board of Education of Topeka*, 347 U. S. 483, 98 L. ed. (Advance p. 583), 74 S. Ct. 686 has eradicated the principle of "separate but equal" education upon which the Delaware cases were predicated and hence has foreclosed the issues of the instant cases, with the exception of the question involving the immediacy of the right of the Negro children to admission to the public schools formerly available only to white students. The matter before the Court now is the implementation of its decision of May 17, 1954 by an appropriate decree or mandate.

In compliance with the decrees of the Chancellor which were affirmed by the Supreme Court of Delaware,[23] the plaintiffs in these cases were admitted to the Hockessin and Claymont Schools. Inasmuch as they have remained in those schools since the Fall of 1952 without incident or social repercussion, it is felt that the conditions which war-

23. *Gebhart v. Belton*, — Del. Ch. —, 91 A. 2d 137.

rant postponement of desegregation in parts of Delaware as well as in certain other states which we believe do justify a deferment of the relief to which the plaintiffs are entitled do not exist with respect to the two districts involved in the Delaware cases.

This Court has determined that further maintenance of segregated public education violates the Constitution of the United States. The primary reason for delaying relief is an existing severe social inflexibility which would make impracticable the immediate admission of Negro children in white schools. The Court below found no such need for postponement with respect to the plaintiffs in the Delaware cases. Experience has sustained the wisdom of the result decreed by the Delaware Courts. It is, therefore, our recommendation, that the proper order to be entered in the instant Delaware cases, involving the named plaintiffs, is an affirmance of the decision of the Supreme Court of Delaware.

II. Recommendations With Respect to the Mandate.

(A) *Introduction.*

This Court in its decision on May 17, 1954 requested that the parties to the several actions before this Court present further argument on questions formerly propounded by this Court with respect to the form of relief to be given pursuant to its decision. The Court expressed a willingness to receive the views of the Attorney General of the United States and the Attorneys General of those States which either require or permit segregated public education.

In view of the foregoing recommendation with respect to the Delaware cases, our discussion of the questions raised by this Court is for the assistance of the Court in the formulation of a proper mandate. The discussion is presented as an aid to the Court, recognizing that many of the problems

raised by the other States bear a striking similarity to problems existing in parts of the State of Delaware. Moreover, the relief granted by this Court in the cases before it will be the prophetic handiwork from which must flow the orderly desegregation of public education in a large segment of the country.

(B) *This Court May and Should Permit a Gradual Adjustment from Segregated Public Education to a System Without Race Distinction.*

By the decision of May 17, 1954, this Court has invalidated almost a century of social tradition which has been perpetuated under apparent constitutional sanction for two generations.[24] Social thinking, public mores and school expenditures have been founded upon the time-accepted doctrine of "separate but equal" public education. The factual review which appears earlier in this brief, as well as similar reviews made in the briefs submitted on behalf of other states, demonstrate the somber extent to which the doctrine of segregation in public education saturates the thinking of the citizens of some of our states. This Court has eradicated the constitutional sanction of this tradition. A transition is required which only time can effectuate. Shock is not the medium by which this transition can be accomplished.

In formulating the appropriate relief, it must be borne in mind that this Court has redefined a basic constitutional right. In all of the cases before this Court, with the exception of the Delaware cases,[25] the lower courts either found factual equality [26] or avoided the consequences which the Court now considers by allowing the public school authorities an opportunity to improve their facilities in order to

24. *Plessy v. Ferguson*, 163 U. S. 537, 41 L. ed. 256, 16 S. Ct. 1138.

25. *Gebhart v. Belton*, — Del. Ch. —, 91 A. 2d 137.

26. *Brown v. Board of Education of Topeka*, 98 Fed. Supp. 797; *Briggs v. Elliott*, 103 Fed. Supp. 920.

meet the requirements of the "separate but equal" doctrine.[27] Opportunity to equalize facilities is now of no significance if there is racial segregation. For the first time, this Court has eliminated considerations of equality of treatment. The Court in its interdiction of segregated facilities has struck at the very heart of the public school system in many states and of necessity has put in issue the status of not only the named plaintiffs but all children who are a part of segregated school systems.

The cases before this Court are from courts of equity. One of the characteristics which has perpetuated the greatness of equity jurisdiction is its flexibility of remedy. In *Hecht Co. v. Bowles,* 321 U. S. 321, 329, 88 L. ed. 754, 64 S. Ct. 587, 592, this Court said:

> "The essence of equity jurisdiction has been the power of the Chancellor to do equity and to mould each decree to the necessities of the particular case. Flexibility rather than rigidity has distinguished it. The qualities of mercy and practicality have made equity the instrument for nice adjustment and reconciliation between the public interest and the private needs as well as between competing private claims."

Equity "may mold its decree so as to accomplish practical results—such results as law and justice demand." *Northern Securities Co. v. United States,* 193 U. S. 197, 360, 24 S. Ct. 436, 466.

In the formulation of equitable relief, "it is always the duty of a Court of equity to strike a proper balance between the needs of the plaintiff and the consequences of the giving of the desired relief." *Eccles v. Peoples Bank of Lakewood Village,* 333 U. S. 426, 431, 92 L. ed. 784, 68 S. Ct. 641, 644.

Considerations of the public interest are of great importance in the formulation of an appropriate equity decree.

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27. *Davis v. County School Board,* 103 Fed. Supp. 337; *Briggs v. Elliott,* 98 Fed. Supp. 529.

> "Courts of equity may, and frequently do go much farther both to give and withhold relief in furtherance of public interest than they are accustomed to go when only private interests are involved." *Virginian Railway Co. v. System Federation No. 40,* 300 U. S. 515, 552, 81 L. ed. 789, 57 S. Ct. 592, 601; see also *Mercoid Corp. v. Mid-Continent Investment Co.,* 320 U. S. 661, 88 L. ed. 376, 64 S. Ct. 268; *Securities and Exchange Comm. v. U. S. Realty and and Improvement Co.,* 310 U. S. 434, 84 L. ed. 1293, 60 S. Ct., 1044; *Porter v. Warner Holding Co.,* 328 U. S. 395, 90 L. ed. 1332, 66 S. Ct. 1086.

Time for adaptation or readjustment to a policy declared by a court is an important potion to which the courts have adverted in striving for the equitable remedial balance. This principle has been applied in at least two important branches of the law, namely in cases involving elimination of nuisances and in cases of violation of the anti-trust laws.

In the nuisance field, the leading case of *Georgia v. Tennessee Copper Company,* 206 U. S. 230, 51 L. ed. 1038, 27 S. Ct. 618, is an example in which this Court determined that injunctive relief should be given "after allowing a reasonable time to the defendants to complete the structures that they are now building, and the effort that they are making to stop the fumes." The decisions of various state courts are in accord with the *Georgia* case, *supra. Hughson v. Wingham* (Wash. S. Ct. 1922) 120 Wash. 327, 207 P. 2, 27 ALR 327; *Caretti v. Broring Building Co.* (Md. Ct. App. 1926) 150 Md. 198, 132 A. 619, 46 ALR 1; *State v. Hutchins* (N. H. S. Ct. 1919) 79 N. H. 132, 105 A. 519, 2 ALR 1685.[28]

Another case in which this Court allowed a reasonable time for adjustment to the court's holding is the case of

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28 Other cases granting a reasonable time for adjustment to the holding of the court in the field of nuisance appear in an annotation in 46 ALR pp. 35-37.

New Jersey v. New York, 283 U. S. 473, 75 L. ed. 1176, 51 S. Ct. 519. By this decision, this Court held that the State of New Jersey was entitled to relief from the dumping of New York City garbage into the ocean off the New Jersey coast. This Court permitted New York City to have a period of approximately one and a half years to conform to its decision. *New Jersey v. New York*, 284 U. S. 585, 75 L. ed. 506, 52 S. Ct. 120. Subsequent action before this Court resulted in postponing the finality of the court's decision until December 1935, a period of four years from the entry of the first order in 1931.[29]

The complexity of modern business organization has on various occasions led this and other courts to provide for deferred relief. In cases where immediate injunctive relief would have caused substantial public injury by cutting off the flow of vital commodities, this Court has permitted a period of transition. *U. S. v. American Tobacco Co.*, 221 U. S. 106, 31 S. Ct. 632, 55 L. ed. 663; *Standard Oil Co. v. United States*, 221 U. S. 1, 31 S. Ct. 502, 55 L. ed. 619. The Court will consider the best method of accomplishing the declared result "with as little injury as possible to the interests of the general public." *United States v. American Tobacco Co., supra.*

Courts have faced the realities of complex situations and after determination of the basic rights involved have permitted extended periods for the formulation of an equitable plan to implement the Court's decision. *United States v. Paramount Pictures, Inc.*, 334 U. S. 131, 92 L. ed. 1260, 68 S. Ct. 915; *United States v. National Lead Co.*, 332 U. S. 319, 67 S. Ct. 1634, 91 L. ed. 2077. This Court, in passing upon the length of the period of transition, has extended that period beyond that fixed by the lower court. *United States v. American Tobacco Co., supra.*

In the light of the numerous actions of this Court in permitting flexible adaptation of relief to existing condi-

29. *New Jersey v. New York*, 296 U. S. 259, 80 L. ed. 214, 56 S. Ct. 188.

tions, there is ample precedent for the granting of time for adjustment in the cases now before this Court.

This Court must determine whether the equitable balance militates in favor of gradual rather than immediate relief. Under the "separate but equal" doctrine, this Court declared that a plaintiff who was deprived of educational facilities equal to those made available by the state to any other race was being deprived of a personal right,[30] of a nature which entitled the injured party to immediate admittance to white educational facilities.[31] The cases in which that doctrine was announced involved institutions of higher learning.[32] The determination of the respective cases affected few except the individual plaintiffs. Desegregation was effected at a level where the intellectual and philosophical approach to the racial problem and the maturity of those affected in all probability would lead to a degree of acceptance or tolerance not to be found in elementary and high schools. The extent of racial desegregation involved in those cases was minimal.

Whether the right to immediate admission to white schools is an absolute right even under the "separate but equal" doctrine remains open to question. In the case of *Fischer v. Hurst*, 333 U. S. 147, 68 S. Ct. 389, 92 L. ed. 604, this Court had occasion to consider whether the order entered by the District Court pursuant to the mandate of this Court in *Sipuel v. Board of Regents of University of Oklahoma, supra*, properly complied with the mandate.

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30. *State of Missouri, ex rel. Gaines v. Canada*, 305 U. S. 337, 59 S. Ct. 232, 83 L. ed. 208.

31. *McLaurin v. Oklahoma State Regents for Higher Education*, 339 U. S. 637, 70 S. Ct. 851, 94 L. ed. 1149.

32. *Sipuel v. Board of Regents of University of Oklahoma*, 332 U. S. 631, 68 S. Ct. 299, 92 L. ed. 247 (Law School); *Sweatt v. Painter*, 339 U. S. 629, 70 S. Ct. 848, 94 L. ed. 1114 (University of Texas Law School); *McLaurin v. Oklahoma State Regents for Higher Education, supra*, (University of Oklahoma); *State of Missouri ex rel. Gaines v. Canada, supra*, (School of Law of State University of Missouri).

The order of the District Court, which alternatively directed (1) that plaintiff be admitted to the University or (2) that defendant refuse admission to all applicants until a separate law school of equal facilities and standing could be established, was held by this Court not to have departed from this Court's mandate.

Factors which weighed in favor of immediate relief under the "separate but equal" cases are overweighed by problems of social acceptance and social, economic and facility readjustment growing out of the decision of May 17, 1954. At least in some areas, there must be a twilight era when personal rights must give way to community problems and general public welfare.

Recognizing the pressing need in certain areas for permitting gradual readjustment to the principle of non-segregation, we direct the Court's attention to the need for clarification of the position of the old "separate but equal" doctrine, insofar as there may be factual educational inequality. As we have pointed out, heretofore, a finding of inequality has been held to justify immediate admission to a theretofore segregated school. If this principle is to continue and is applied at the elementary and high school level, there is no doubt of the serious repercussions which will follow. Hence, it is submitted that this Court should make amply clear that any relief in the field of public education should be given on the basis of the rights declared by this Court in its decision of May 17, 1954 and that all relief should be based upon the principles which we have discussed.

(C) *This Court Should Remand the Cases to the Lower Courts for Formulation of Decrees for the Admittance of Plaintiffs to Public Schools Without Regard to Race as Soon as Practicable Within a Time Limit to Be Set by This Court.*

Based upon the conclusion reached in the foregoing section that a period of gradual adjustment to non-segre-

gated public education is advisable in some localities, it is necessary to consider the best method of accomplishing this result.

From the factual review appearing in this brief, as well as those appearing in briefs filed on behalf of other states, it is evident that a wide diversity of public attitude exists on the subject of non-segregation. This diversity exists not only between states but even within the states, as in the case of the State of Delaware. Immediate desegregation resulting in an uneventful transition in one locality would result in strong community upheaval in another locality. Hence, there is no standard formula, no elixir by which the transition can be uniformly effected.

The transition can be moulded only through wisdom based upon a knowledge of the facts and circumstances and psychology of the community affected. These facts can best be obtained and the transition can be most smoothly effectuated by the courts in which these cases arose.

This Court has on numerous occasions remanded cases to lower courts for proceedings in accordance with the mandate of this Court. *Russell v. Southard,* 12 How. (U. S.) 139, 13 L. ed. 927; *Universal Battery Co. v. United States,* 281 U. S. 580, 50 S. Ct. 422, 74 L. ed. 1051; *Sipuel v. Board of Regents of Oklahoma University, supra; Sweatt v. Painter, supra.*

The ultimate disposition of the cases before the Court requires the determination of additional facts. Where additional facts are required, this Court has remanded cases to the lower court for ascertainment of those facts. *Panama Mail S. S. Co. v. Vargas,* 281 U. S. 670, 50 S. Ct. 448, 74 L. ed. 1105; *Universal Battery Co. v. United States, supra; Ballard v. Searls,* 130 U. S. 50, 9 S. Ct. 418, 32 L. ed. 846. This procedure has been followed in fixing the relief to be given. *Rogers v. The St. Charles,* 19 How. (U. S.) 108, 15 L. ed. 563; *United States v. American Tobacco Co., supra.*

This Court does not have before it, nor should it undertake, the Herculean task of outlawing the existing system

of public education, nor of creating a substitute. This Court has before it the rights of individual children. Those rights can best be brought to fruition at the local level by the courts of first instance. To this end, the cases should be remanded for determination of the immediacy or remoteness of the relief.

The mandate or decree of this Court should be the beacon light by which the further action of the lower courts can be guided. It should make clear that the rights enunciated in the decision of May 17, 1954 are to be effectuated by appropriate relief either immediately or as soon thereafter as community acceptance will permit. Relief should be deferred by the local courts only after thorough consideration is given to numerous factors such as the history of race relations in the community affected, the extent of social and economic segregation within the community, the permanency of the population, the extent of migration to and from the community, and the condition and capacity of existing facilities. Recognizing that the ultimate achievement is the granting of full relief to the plaintiffs, in order to entertain a deferment in the perfection of that goal, the Court must be convinced that those charged with the responsibility of effecting total integration are taking constructive steps toward the elimination of the segregation barrier and that those steps are being bona fidely carried out as expeditiously as it is possible.

In approaching this problem, the realization must be ever present that the Court is the instrumentality through which an individual is given the opportunity to exercise his constitutional right. It cannot and does not undertake to create or enforce social acceptance for an individual or race. The words of Chief Justice Vinson in the case of *McLaurin v. Oklahoma State Regents for Higher Education, supra,* are particularly pertinent. He stated (at p. 454):

> "The removal of the state restrictions will not necessarily abate individual and group predilections,

prejudices and choices. But at the very least, the state will not be depriving appellant the opportunity to secure acceptance by his fellow students on his own merits."

A further subject for inclusion in the mandate or decree of this Court is designation of a final or ultimate date within which communities may expect courts to defer the granting of immediate relief to those claiming violation of their constitutional rights because of a segregated public education system. Recognizing the local resistance to the perfection of relief under the decision of May 17, 1954 and a strong desire to defer the piercing of the segregation barrier for an extended—not an indefinite—period, it is felt that although broad discretion should be vested in the lower courts in deferring relief, this Court should set a cut-off or ultimate date for the deferring of relief in order that the decision of May 17, 1954 may not be completely thwarted.

In the prior section of this brief dealing with the advisability of providing for a period of time within which relief is to be ultimately granted, we have cited various cases in which this Court has permitted a deferral of ultimate relief. Deferral periods of six months[33] and one year[34] have received the approval of this Court in the anti-trust field. An adjustment over a four year period was permitted in the New York City garbage case,[35] and there was a span of nine years before ultimate disposition in the case in which copper companies were prohibited from discharging noxious gases over the State of Georgia.[36]

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33. *Standard Oil Co. v. United States, supra; United States v. American Tobacco Co., supra; United States v. Paramount Pictures, Inc., supra.*

34. *United States v. National Lead Co., supra.*

35. *New Jersey v. New York,* 283 U. S. 473, 75 L. ed. 1176, 51 S. Ct. 519; 284 U. S. 585, 75 L. ed. 506, 52 S. Ct. 120; 296 U. S. 259, 80 L. ed. 214, 56 S. Ct. 188.

36. *Georgia v. Tennessee Copper Co.,* 206 U. S. 230, 51 L. ed. 1038, 27 S. Ct. 618; 237 U. S. 474, 59 L. ed. 1054, 35 S. Ct. 631; 237 U. S. 678, 59 L. ed. 1173, 35 S. Ct. 752; 240 U. S. 650, 60 L. ed. 846, 36 S. Ct. 465.

Although these precedents are not factually analogous to the present situation, they are indicative of the extent to which this Court has permitted deferment of relief in order to effect a gradual transition. We respectfully submit that this Court out of the bounty of its wisdom should fix as an ultimate date beyond which there will be no further postponement of relief under the decision of May 17, 1954 a date which will afford to the States an opportunity to plan, educate and promote community acceptance and orderly physical fruition of desegregation.

CONCLUSION.

In the light of the decision of this Court of May 17, 1954 and the successful integration of respondents into the Claymont and Hockessin Schools, the two Delaware cases should be affirmed.

The mandate of this Court should include instructions to the lower courts that, in granting or deferring immediate relief, they shall exercise equitable discretion according to local conditions provided that a constructive transitional program is shown to be in progress and subject to the limitation that ultimate relief by way of admission on a non-segregated basis shall be effected no later than a date which this Court should fix.

Respectfully submitted,

H. ALBERT YOUNG,
Attorney General of the State of Delaware,

CLARENCE W. TAYLOR,
Deputy Attorney General of the State of Delaware,

ANDREW D. CHRISTIE,
Special Deputy to the Attorney General.

EXHIBIT 1

SCHOOLS, SCHOOL DISTRICTS, AND ATTENDANCE AREAS FOR THE EDUCATION OF COLORED CHILDREN, SEPTEMBER, 1954

	(A) Colored Schools in the Special Districts and colored School Districts	(B) White Dist. in which the school bldg. of Column (A) is geographically located	(C) Spec. Dists. which have Administrative Jurisdiction over schs. listed in Column (A)	(D) Attendance Area of schs. and sch. dists. in Col. (A) totally within the boundary of a Spec. Dist.	(E) Attendance Area of schs. and sch. dists. in Col. (A) totally within boundary of a white State School District	(F) Attendance Area of Schools or School Dists. in Col. (A) within the boundaries of more than one white district	
						Special Districts	Other White School Districts
Schools	Star Hill	Caesar Rodney	Caesar Rodney	Caesar Rodney			
	Dunbar	Caesar Rodney	Caesar Rodney	Caesar Rodney			
	Claymont Col.	Claymont	Claymont	Claymont			
	Booker T. Washington	Dover	Dover			Dover, Caesar Rodney, Smyrna	Frederica, Kenton, Hartly, Magnolia, Felton, Leipsic, Little Creek, Clayton, Oak Point, Rose Valley, Wiley's
	Richard Allen	Georgetown	Georgetown	Georgetown			
	P. S. duPont	Harrington	Harrington	Harrington			
	Paul L. Dunbar	Laurel	Laurel			Laurel	Delmar, Bethel
	Lewes Col.	Lewes	Lewes			Lewes, Rehoboth	
	Benjamin Banneker	Milford	Milford	Milford			
	Newark Col.	Newark	Newark	Newark			
	Booker T. Washington	New Castle	New Castle	New Castle			
	Buttonwood	New Castle	New Castle	New Castle			
	Frederick Douglas	Seaford	Seaford			Seaford	Blades
	Thomas D. Clayton	Smyrna	Smyrna			Smyrna	Clayton
	Delaware City	Delaware City			Delaware City		
	Hockessin Col.	Hockessin					Hockessin, Yorklyn
	Iron Hill	Newark		Newark			
	Leis Chapel	Townsend			Townsend		
	L. L. Redding	Middletown				Newark, Smyrna	Delaware City, Townsend, Middletown, Odessa, Commodore MacDonough, Port Penn, Eden, Clayton
	Millside	Rose Hill-Minquadale			Rose Hill-Minquadale		
	Mt. Pleasant	Middletown			Middletown		
	Newport	Newport				Alexis I. duPont	Newport, Marshallton, Christiana, Hockessin, Stanton, Alfred I. duPont, Yorklyn, Richardson Park, Oak Grove
	Townsend	Townsend			Townsend		
	Cheswold	Dover		Dover			
	Fork Branch	Dover		Dover			
	Henry Comprehensive High School	Dover				Dover, Smyrna, Caesar Rodney, Harrington	Felton, Oak Point, Magnolia, Rose Valley, Wiley's, Frederica, Leipsic, Hartly, Little Creek, Kenton, Clayton
Districts	Kenton	Kenton			Kenton		
	Lockwood	Hartly			Hartly		
	Mt. Olive	Magnolia			Magnolia		
	Union	Frederica				Harrington	Frederica, Felton, Magnolia
	Viola	Felton				Caesar Rodney	Felton
	Woodside	Caesar Rodney		Caesar Rodney			
	Blocksom's	Seaford		Seaford			
	Bridgeville-Trinity	Bridgeville			Bridgeville		
	Delmar	Delmar			Delmar		
	Drawbridge	Lewes				Lewes, Georgetown	
	Ellendale	Ellendale			Ellendale		
	Frankford	J. M. Clayton					J. M. Clayton, Lord Baltimore, Roxana
	Jason Comprehensive High School	Georgetown				All Special Dists. in Sussex County	All State Board Unit schools in Sussex County
	Greenwood	Greenwood					Greenwood, Farmington
	Lincoln	Lincoln			Lincoln		
	Millsboro	Millsboro			Millsboro		
	Milton	Milton			Milton		
	Nanticoke Indian	Millsboro			Millsboro		
	Nassau	Lewes		Lewes			
	Owen's Corner	Delmar			Delmar		
	Portsville	Laurel				Laurel	Bethel
	Rabbit's Ferry	Lewes		Lewes			
	Rehoboth	Rehoboth		Rehoboth			
	Ross Point	Laurel		Laurel			
	Selbyville	Selbyville					Selbyville, Roxana
	Slaughter Neck	Milford				Milford	Lincoln, Milton
	Warwick 203	Millsboro			Millsboro		
	Warwick 225	Millsboro			Millsboro		
	Williamsville	Selbyville			Selbyville		

EXHIBIT 2

June 9, 1954

Mr. J. Ohrum Small
President, State Board of Education
Delaware Trust Building
Wilmington, Delaware

Re: *Gebhart v. Belton, et al. and Bulah, et al.*

Dear Mr. Small:

The United States Supreme Court, by its unanimous decision in *Brown v. Board of Education*, has struck down "the separate but equal doctrine" in the field of public education.

The Court decided that segregation of children in public schools solely on the basis of race, even though the physical facilities and other tangible factors may be equal, deprives the children of the minority group of equal educational opportunities.

The Court said, "separate educational facilities are inherently unequal" and concluded that, "the plaintiffs and others similarly situated, for whom the actions have been brought, are, by reason of the segregation complained of, deprived of the equal protections of the laws guaranteed by the Fourteenth Amendment.

According to the opinion, we are required to submit briefs by October 1, 1954 for the purpose of assisting the Court in formulating decrees to bring about an effectual gradual adjustment from existing segregated systems to a system not based on color distinctions.

The Court recognized that the decision presents problems of considerable complexity because of the great variety of local conditions. The opinion nullifies our constitutional provision and its statutory counterpart providing for separate but equal educational facilities. The Court announced that segregation is a denial of the equal protection of the laws.

The opinion is not a self-executing one and does not call for immediate integration. It is possible for any school district, however, where circumstances permit and the situation warrants, to effect integration consonant with the law of the land as now announced by the recent Supreme Court opinion without doing violence to the Constitution and laws of our own State, notwithstanding the fact that the mandate of the United States Supreme Court has not yet been handed down.

On the other hand, the State Board of Education may well require time within which to bring about integration in an orderly fashion within the spirit and meaning of the recent Supreme Court decision. I am sure that the Board will formulate some concrete plan directed towards an effective gradual adjustment from existing segregation in the public schools in Delaware to a system of non-segregation in accordance with the spirit, purpose and intent of the opinion as expeditiously as it is possible for it to do so.

I should like to meet with the members of your Board so that we may review together a number of problems, some of which we touched upon at our conference with the Governor, relating to specific localities in our State in order that I may be in a position to inform the members of the United States Supreme Court what plan for de-segregation has been adopted by our Board of Education of the State of Delaware, and when we expect it may finally be put into effect.

Based upon the plan your Board has made and the information given me to carry that plan into effect, I will be able to present to the United States Supreme Court the specific terms and directions upon which the decree or mandate should be framed.

Very truly yours,

/s/ H. Albert Young
Attorney General

HAY:mjw

EXHIBIT 3

State Board of Education Policies (I) Regarding Desegregation of the Schools of the State

The State Board of Education held a special meeting in Dover, Friday evening, June 11, and issued the following statement:

The United States Supreme Court unanimously declared that segregation in the public schools of the United States is unconstitutional. At that time the Court permitted a period within which states could present further arguments on the implementing of its action.

As a general policy, the State Board of Education fully intends to carry out the mandates of the United States Supreme Court decision as expeditiously as possible. It is recognized that communities differ one from the other in tradition and attitudes; therefore, the actual carrying out of the integrative process will require a longer period of time in some parts of the State than in others.

Accordingly, the State Board of Education adopted the following statement of policy regarding non-segregation in the public schools of Delaware:

A. Since the Wilmington School authorities have indicated that they are in a position to move promptly in the direction of integration, the necessary permission for embarking upon this program is hereby granted the Wilmington Board of Education.

B. It is the considered opinion of the State Board of Education that the school authorities together with interested citizen groups throughout the State should take immediate steps to hold discussions for the purpose of (1) formulating plans for desegregation in their respective districts and (2) presenting said plans to the State Board of Education for review.

C. The State Board of Education will examine proposed programs of integration in light of the following considerations:

1. School Districts

a. There are many items of legislation which must be prepared in order to effect these changes and immediate plans are being made to prepare such legislation for presentation to the General Assembly of 1955, for example, the elimination of Negro districts as they now exist and their assimilation into taxing units already existing or later to be created.

b. The State Board of Education intends to make every effort possible within the limits of existing legislation not only to avoid the creation of educationally unsound units, but also to promote as far as possible the formation of larger and more efficient administrative units.

2. Attendance Areas

a. Economy requires the continued use of many of the school buildings now existing in the State.
b. In all districts attendance areas are to be fixed by the local school authorities under regulations to be established by the State Board of Education.

3. School Construction

a. The State Board of Education must reappraise the need for the construction of certain schools or additions for some districts authorized under the 1953 School Construction Act, but these and similar ones will be approved by the State Board of Education if and when the local school authorities submit plans showing the place of such construction in an over-all educational program for the community.

b. The necessity of proceeding with some of these plans as rapidly as possible is recognized because of the local school census data, but the State Board of Education will insist upon having, in at least outline form, a plan for the use of such additional facilities before approving further construction.

The resources of the State Department of Public Instruction will be available to all districts in the solution of these problems.

The State Board of Education has confidence that the people of the State of Delaware will meet the challenge of the times courageously, intelligently, and understandingly.

Adopted
June 11, 1954

STATE BOARD OF EDUCATION

GEORGE R. MILLER, JR.
George R. Miller, Jr.
Secretary

EXHIBIT 4

PROVIDING EQUAL EDUCATIONAL OPPORTUNITY IN THE WILMINGTON PUBLIC SCHOOLS

Resolution adopted by the Board of Public Education in Wilmington, on August 2, 1954

BOARD OF EDUCATION IN WILMINGTON

GAIL BELDEN, *President*

ELEANOR L. J. CUSSLER, *Vice President*

WILLIAM H. CANTWELL
AARON FINGER
THOMAS J. HEALY, JR.
HILMAR L. JENSEN

ADMINISTRATIVE COUNCIL

WARD I. MILLER, *Superintendent*

A. B. ANDERSON, *Director Vocational Education*
MURIEL CROSBY, *Director Elementary Education*
JOHN J. MURRAY, *Director, Business Administration*
M. CHANNING WAGNER, *Director, Secondary Education*

RESOLUTION REGARDING INTEGRATION OF THE WILMINGTON PUBLIC SCHOOLS

On May 17, 1954, the Supreme Court of the United States handed down its unanimous decision that segregation of pupils in the public schools is a violation of the federal constitution and represents a denial of the equal protection of the laws.

However, the court saw fit to postpone the issuance of decrees implementing its opinion and ordered the cases restored to the docket for reargument beginning October 1, 1954. Following these considerations, it is expected that the formal decrees will be issued by the court.

Under date of June 9, 1954, the Honorable H. Albert Young, Attorney General of the State of Delaware wrote to Mr. J. Ohrum Small, President of the State Board of Education as follows:

> "According to the opinion, we are required to submit briefs by October 1, 1954 for the purpose of assisting the court in formulating decrees to bring about an effectual gradual adjustment from existing segregated systems to a system not based on color distinction.
>
> "The Court recognized that the decision presents problems of considerable complexity because of the great variety of local conditions. The opinion nullifies our constitutional provision and its statutory counterpart providing for separate but equal educational facilities. The Court announced that segregation is a denial of the equal protection of the laws.
>
> "The opinion is not a self-executing one and does not call for immediate integration. It is possible for

any school district, however, where circumstances permit and the situation warrants, to effect integration consonant with the law of the land as now announced by the recent court opinion without doing violence to the Constitution and laws of our own State, not withstanding the fact that the mandate of the United States Supreme Court has not yet been handed down."

On June 11, 1954, the State Board of Education issued a formal statement based on the opinion of the attorney-general as given above, authorizing the Board of Public Education in Wilmington to proceed with the development of plans for the integration of the city schools and asking that such measures as are approved be forwarded to the State Board for inclusion in the brief to be submitted to the Court before October 1.

At a meeting of the Board of Public Education in Wilmington held on June 21, 1954, the Superintendent presented specific proposals regarding integration of the city schools. These were considered with great care and thoroughness. The proposals were studied again at the regular meeting held on July 8, 1954. At this time opportunity was given individuals or representatives of organizations or groups to put forward any statement or materials. A number of persons availed themselves of this opportunity. The proposals of the Superintendent and staff and the remarks of individuals were well covered in the press and on the radio and television.

Since that time numerous letters and calls have been received by the Board and the Superintendent both in support of and in opposition to the plans under consideration.

Following a complete review of all the questions that have been raised, on August 2, 1954, the Board approved by resolution the following plan and authorized the Superintendent to take the steps necessary to put it into effect.

POLICIES REGARDING INTEGRATION

1. The Board desires to take at once such steps as are practical and possible toward the implementation of the decision of the Supreme Court. The integration of the summer school program, of the course in practical nursing and of certain classes in special education, constitute initial steps toward that objective.

2. The following policies are approved and the Superintendent is authorized to put them into effect immediately.

A. Policy regarding elementary schools

Attendance areas will be established around each elementary building unit. While pupils living in a particular area would normally attend the school located in that area, nevertheless, in accordance with the policy now in effect, parents may request transfer of their children to another unit. Reassignment will be made if space elsewhere is available.

B. Policies regarding attendance of pupils in trade and industrial courses at the Brown Vocational High School and the Howard High School.

a. All courses offered in only one of these high schools shall be open to all students regardless of residence.

Courses offered only at Brown—1954-55

Commercial Art	Industrial Chemistry
Needle Trades	Plumbing
Printing	Radio and Television

Courses offered only at Howard, 1954-55

Shoe Repair	Auto Body and Fender

b. If found qualified, pupils now enrolled in the **Electricity** course at Howard may transfer to Brown after completion of the units on "Wiring."

c. Requests for enrollment in the above courses by students already registered in other courses will be approved only after a conference with the counselors and the principals of the schools concerned.

d. Opportunity for new registration in the courses listed above and guidance conferences will be provided up to August 20, 1954.

C. Policies regarding reassignment of teaching staff

Transfer and reassignment of the teaching staff shall be made as necessary to implement the above policies.

D. Policies regarding evening schools and all activities of extended services

All approved classes shall be open to students on an equal basis.

E. Policies regarding junior and senior high schools

The integration of junior and senior high schools presents difficult problems which will require further study. Therefore, for the school year 1954-55, no change will be made in the operation and attendance of the junior and senior high schools, with the following exception:

Students in the eleventh or twelfth grades desiring advanced work in classes not offered in one school may transfer to another in which such courses are given.

PROCEDURES TO BE FOLLOWED IN REQUESTING TRANSFER OF PUPILS

All requests for transfer of pupils from one school unit to another must be made by parents or guardians in writing to the Superintendent of Schools. The name and grade of each child, home address and telephone number will be required. All requests should be filed not later than August 15, 1954. As soon as possible thereafter and not later than August 25, 1954, parents will be notified in writing of the action taken on the request. Parents should call the office of the principal of the school to learn the elementary district in which they reside.

ATTENDANCE AREAS OF ELEMENTARY SCHOOLS
1954 - 1955

Harlan

North —City line

West —City line

South —West of Market Street—West 27th Street

East of Market Street—East 30th Street to junction of Claymont Street and Todd's Lane, thence Todd's Lane

East —City line

Shortlidge

North —West 27th Street

West —City line

South —West 21st Street

East —Market Street

Washington

North —West 21st Street

West —Between Brandywine Creek and West 21st Street—City line

Between Brandywine Creek and Delaware Avenue—Van Buren Street

Between Delaware Avenue and Eighth Street —Monroe Street

South —Between Van Buren Street and Monroe Street —Delaware Avenue

Between Monroe and Market Street—West Ninth Street

East —Market Street

Gray

North —East 30th Street to junction of Claymont and Todd's Lane, thence Todd's Lane

West —Market Street

South —Market Street to junction of Jessup Street and East 14th Street—Brandywine Creek, thence East 14th Street

East —City line

Stubbs and No. 20

North —Market Street to junction of Jessup Street and East 14th Street—Brandywine Creek, thence East 14th Street

West —Market Street

South —East Eighth Street

East —City line

Drew and Pyle

North —East Eighth Street

West —Market Street

South —Christina River

East —City line

Palmer and Elbert

North —Christina River

West —Christina River

South —City line

East —City line

Lore

North —Pennsylvania Avenue

West —City line

South —Between western City line to Lincoln Street—City line

Between Lincoln Street and Broom Street—Beech Street

East Broom Street

Williams

North —Between Broom Street and Van Buren Street —Pennsylvania Avenue

Between Van Buren Street and Monroe Street —Delaware Avenue

Between Monroe Street and Market Street—West Ninth Street

West —Broom Street

South —Beech Street

East —Market Street

Highlands

North —Brandywine Creek

West —City line

South —Pennsylvania Avenue

East —Van Buren Street

Number 19

North —Beech Street

West —City line

South —City line

East —Christina River

EXHIBIT 5

STATE OF DELAWARE

(Seal)

STATE BOARD OF EDUCATION
Dover, Delaware

SUGGESTED POLICIES FOR OPENING OF SCHOOL (II)

In the policy statement regarding the problem of desegregation issued by the State Board of Education it was clearly stated that all school districts should immediately take steps to develop plans for desegregation.

No pupils, except those *with proper transfer* permits shall be accepted by any school from other schools unless and until plans from that school for desegregation in that area have been approved by the State Board of Education.

In September 1954 all buses will run as usual and all teachers will appear at their regular posts except in those cases where approved plans for desegregation have been made effective with the required administrative or organizational changes.

Since the United States Supreme Court will hear further arguments some time in October to help that court find the best means of carrying out its decree, the State Board requests that *all schools,* maintaining four or more teachers, present a *tentative plan* for desegregation in their area on or before *October 1, 1954.*

These plans will be considered tentative only, unless otherwise indicated by the school authorities.

Adopted by
State Board of Education
August 19, 1954

EXHIBIT 6

STATE OF DELAWARE

(Seal)

STATE BOARD OF EDUCATION

Dover, Delaware

SOME ITEMS AND SUGGESTIONS RELATIVE TO DESEGREGATION PLANS (III)

INTRODUCTION:

In order to facilitate the adoption by the State Board of Education of policies relating to the ending of segregation in Delaware, the State Board on June 9, 1954, requested the local boards of education or school trustees to formulate and present proposals relating to the ending of segregation in their respective districts. Local boards are now asked to present their proposals or report the status of their studies not later than October 1, 1954.

The following data or suggestions are designed as a guide to local boards in arriving at a proposal for ending segregation in the respective school districts:

ITEMS TO BE CONSIDERED IN PLANNING:

In the preparation of a plan the following are essential data:

(a) Total number of children to be served in the district or districts involved.

(b) Total number of children who can be housed in the building or buildings available.

(c) Determination of the number of teaching positions to be used.

(d) Possible number of pupil applicants to be expected.

(e) Attendance rules and requirements.

SUGGESTIONS WHICH MAY BE CONSIDERED IN PLANNING:

It is suggested that in formulating plans to end segregation local boards may desire to consult with a committee composed of lay and professional groups in their districts in order that such groups may contribute to the planning and may, in turn, become acquainted with the problems, if any, involved. The function of this committee would be solely advisory to the local board of education.

It is the sincere hope of the State Board of Education that all teachers presently employed and who have had successful experience will be retained in whatever pattern of integration that is ultimately developed.

For the sake of educational continuity and for the sake of maintaining an adjustment status of individuals, it is strongly suggested that, where possible, pupils be allowed to complete the grade group in which they are presently enrolled, e.g., a student attending the elementary school, grades 1-6, should be allowed to complete the six grades in that particular school situation. The same suggestion applies to the junior high school and the senior high school divisions.

School districts may contain one or more attendance areas. If more than one attendance area is contained in a school district, the following must be taken into consideration:

(a) GERRYMANDERING—It is obvious that schools in physical areas inhabitated largely or altogether by Negroes will be attended mostly or entirely by Negro children. The same will be true of certain schools in white sections. This results from geographic location and has nothing to do with discrimination.

"If attendance districts, however, are so contoured as to skip houses or blocks or to extend geographical peninsulas and islands into physically unified areas solely for the purpose of including families of a particular race,

it is reasonably certain that the districting would be regarded as an invalid evasion of desegregation requirements." (Harvard Law Review, v. 67, Number 3, Jan. 1954.)

(b) MAINTAINING SEGREGATION IN NON-SEGREGATED SCHOOLS—Colored pupils may not be separated for intra-mural activities in study halls, or classrooms, nor shall there be any racial seating arrangement in the classrooms or elsewhere in the school. (McLaurin v. Oklahoma State Regents, 339 U. S. 637 (1950)

(c) ADMINISTRATIVE PRACTICES—No board of education nor board of school trustees shall set up special examinations or any entrance procedures the purpose of which is aimed at excluding Negro pupils from the white schools.

If a school district has more than one building serving a given grade, attendance at a particular school could be decided by choice of the student provided, in the event of insufficient space at a particular school, preference should be given students residing nearest the school in question.

The State Board of Education believes that constitutional requirements are met either by integration within the fixed attendance areas or integration based on a single attendance area wherein freedom of choice is exercised to the extent that physical facilities will allow. The decision as to which type of attendance plan is established in a school district ultimately rests with the local board of education.

When the proposal made by a local board has been approved by the State Board, it will be the responsibility of the local board to present and explain the approved plan to the people of the district concerned.

Adopted by the
State Board of Education
August 26, 1954

EXHIBIT 7

REPORT OF APPROVED PLANS FOR DESEGREGATION AND PUPILS INVOLVED

District	Grades desegregated	White	Colored
Wilmington	Kindergarten through Grade 6	5,491	2,123
	Howard High School (formerly colored)	10	554
Claymont	All grades	1,184	48
New Castle	Grades 9 through 12	575	21
	Grade 1	268	15
Newark	Grades 7 through 12	1,040	50
Alfred I. duPont	Grades 1, 2, 3, 5, 7, 9 (Only one family involved)	941	7
Delaware City	Grades 7 through 12	54	20
Dover	Desegregated for academic program in high school	716	19 eligible
Conrad	Grades 10 through 12	680	19
Alexis I. duPont	High School and grade school	972	12
Hockessin	Grades 1 and 5	106	7
	TOTAL	12,007	2,895

The total number of white pupils as of September 30, 1954 was 47,696 and the total colored 10,225, or a grand total of 57,921 white and colored pupils.

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HAROLD B. WILLEY, Clerk

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1954

No. 1 etc.

OLIVER BROWN, ET AL.,
Appellants,
v.
BOARD OF EDUCATION OF TOPEKA, SHAWNEE COUNTY, KANSAS, ET AL.

HARRY BRIGGS, JR., ET AL.,
Appellants,
v.
R. W. ELLIOTT, ET AL.

DOROTHY E. DAVIS, ET AL.,
Appellants,
v.
COUNTY SCHOOL BOARD OF PRINCE EDWARD COUNTY, VIRGINIA, ET AL.

FRANCES B. GEBHART, ET AL.,
Petitioners,
v.
ETHEL LOUISE BELTON, ET AL.

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SUPREME COURT OF THE UNITED STATES

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PRELIMINARY STATEMENT

This brief is filed by the Attorney General of the State of Arkansas as *amicus curiae* at the invitation of this Court in the four cases shown in the caption. For brevity and convenience, the four cases are referred to collectively as "the *Brown Case*". *Brown* v. *Board of Education of Topeka, Shawnee County, Kansas*, 347 U. S. 483.

In the *Brown Case*, the Chief Justice, speaking for the unanimous Court, stated the issue presented to the Court in the four cases as follows, 347 U. S. at 493:

> "Does segregation of children in public schools solely on the basis of race, even though the physical facilities and other 'tangible' factors may be equal, deprive the children of the minority group of equal educational opportunities?"

The Court decided that issue in the following language, 347 U. S. at 495:

> "We conclude that in the field of public education the doctrine of 'separate but equal' has no place. Separate educational facilities are inherently unequal. Therefore, we hold that the plaintiffs and others similarly situated for whom the actions have been brought are, by reason of the segregation complained of, deprived of the equal protection of the laws guaranteed by the Fourteenth Amendment."

Let it be said at the outset that nothing contained in this brief is intended to bring into question the correctness of the ruling of this Court or its reasons for reaching that conclusion.

The full force and effect of the decision in the Brown Case was recognized by a "policy statement" issued by the State Board of Education of Arkansas following a meeting of the Board on June 14, 1954. The policy statement of the Board is as follows:

> "Under our present law the State Board of Education acts only in an advisory capacity to local school boards. The local board itself is the governing body of the school district and its decisions are final. Therefore, decisions must be made by the local school board, but within the limitations and restrictions provided by law. Our present state law provides for segregation in the public schools and any decision by a local board providing for integration of the races is premature, as the Supreme Court in its opinion stated that further arguments would be heard and a decree entered. We do not know when the decree will be entered or what it will provide. In the meantime, members of both races at the community level should continue as they have in the past in working cooperatively and effectively in a friendly effort to achieve better and substantially equal schools for all children, without regard to race.

> "It is important to keep in mind that policy decisions are made by local school boards. The public school system in America calls for local control of schools and the state functions in the area of leadership only in such vital statewide matters as the one involving segregation of the races."

The General Assembly of Arkansas (the constitutional legislative branch of Arkansas' government) has not been in session since March of 1953 and will not convene in regular session until January of 1955. Without anticipating what action, if any, the General Assembly of Arkansas will take in its 1955 session, it is probably safe to say at this time that some further words of advice and direction from this Court will go a long way toward charting the course of future action or inaction by the Arkansas General Assembly. One of the purposes of this brief is to solicit most earnestly from this Court such words of clarification and advice as to the course to be pursued by the people of Arkansas in carrying out the final mandate of the Court as may be proper.

PERTINENT ARKANSAS CONSTITUTIONAL AND STATUTORY PROVISIONS

Ark. Const. (1874) Art. 14, §1, provides:

> "Intelligence and virtue being the safeguards of liberty and the bulwark of a free and good government, the State shall ever maintain a general, suitable and efficient system of free schools whereby all persons in the State between the ages of six and twenty-one years may receive gratuitous instruction."

Ark. Const. (1874) Art. 14, §4, provides:

> "The supervision of public schools and the execution of the laws regulating the same shall be vested in and confided to such officers as may be provided for by the General Assembly."

The first general law providing for the separation of white and negro children in the public schools of Arkansas was enacted on July 23, 1868 — the year of adoption of the Fourteenth Amendment to the United States Constitution. The act provided that school boards in Arkansas shall "make the necessary provisions for establishing separate schools for white and colored children and youths . . . ." Act 52, Ark. Acts of 1868.

In 1873 the Arkansas school law of 1868 was re-enacted and Act 130, Ark. Acts of 1873, §108, provided for "establishing separate schools for white and colored children and youths." According to a contemporary newspaper, there were twenty negro members in the 1873 session of the Legislature and it was reported that "that one-fifth part is a complete master of the two houses, as if the number that composed the group were three times as great." Editorial, "The Colored Legislators," Arkansas Gazette, February 1, 1873, p. 2.

It is also interesting to note that on January 6, 1873 (the year during which the Arkansas school laws were being formulated), J. C. Corbin became State Superintendent of Public Instruction for Arkansas. He was a negro educator who came to Arkansas during the War between the States. See Weeks, "School History of Arkansas." (U. S. Bureau of Education Bul. No. 27, 1912) pp. 59, 117.

The only statutory law in Arkansas today on the separation of white and negro children in the Arkansas public school system provides:

> "The board of school directors of each district in the State shall be charged with the following powers and perform the following duties . . . (c) Establish separate schools for white and colored persons." Ark. Stats. (1947) §80-509.

The existing school segregation law in Arkansas, therefore, apparently had its origin at a time when the negroes in Arkansas greatly influenced, if not dominated, legislative action on the school question.

FACTUAL BACKGROUND

Attached hereto as Appendix "A" appears a tabulation which shows pertinent information as to the various school districts of Arkansas. The purpose of this tabulation is to demonstrate the proposition that the wide variety of circumstances which exist in the various counties of Arkansas requires a wide variety of remedies and plans in bringing about the ultimate result demanded by the decision of this Court, that is, the abolition of the dual school system in Arkansas.

There are 75 counties in Arkansas. The tabulation shows there are 422 separate school districts in the State or an average of about five separate districts for each county. Each school district has its separate board of directors which is the immediate governing authority of the district. The members of the board are elected by the qualified electors of the district and they are directly responsible to the people for their actions.

It is of interest to note that there are 14 counties out of the total 75 counties which had no negroes enrolled in the public schools of the county. Ten of the counties without negro population are located in the north and northwest (mountain) section of the State. Two of the non-negro counties (Polk and Scott) are in the southwestern section of the state. The remaining two non-negro counties (Clay and Greene) are contiguous to Mississippi County to the east which had a negro enrollment of 4,789 or about 20% of the total enrollment for Mississippi County.

By way of contrast, it will be seen from Appendix "A" that in six counties in Arkansas the negro enrollment exceeded the white enrollment. Five of these predominately negro counties (Lee, St. Francis, Crittenden, Chicot and Phillips) are in the eastern section of the State and border the Mississippi River. The other predominately negro county (Lincoln) is in South-central Arkansas.

The tabulation shows that the negro enrollment for the State was about 23% of the total enrollment of the State.

As further evidence of the variety of conditions and circumstances in Arkansas, it should be noted that two districts in Arkansas have already integrated the white and negro children in the schools.

The Charleston School District in Western Arkansas (Franklin County) has integrated pupils during the 1954-1955 session from the first grade through the twelfth grade. The Fayetteville School District in Northwest Arkansas (Washington County) has an enrollment of 3,096 white pupils and 64 negro pupils. This district has integrated the negro and white pupils at the high school level. Negro children in the Fayetteville School District attend a segregated school from the first grade through the ninth grade. For the 1954-1955 session, 11 negro high school pupils are attending the same high school with approximately 500 white children.

It is a matter of general information that integration has been accomplished so far in the Charleston and Fayetteville School Districts without any unusual incidents. However, from a comparison of the factual situations of the Charleston and Fayetteville School Districts with, for example, districts in St. Francis and Phillips Counties, it would certainly seem to follow as a matter of necessity that the process of integration must be applied as the circumstances in each district may require.

ARGUMENT

1. This Court should not order "forthwith integration" in the public schools.

2. This Court should enter a decree in the pending cases which will permit gradual adjustments.

3. The Court should leave the problem of integration of the races in public schools to Congress for appropriate legislation.

Point 1

This Court Should Not Order Immediate Integration

This Court in its opinion in the *Brown Case* clearly recognized that the procedure for integration of the races in the public schools "presents probllems of considerable complexity." Thus the Court has indicated that it is not unmindful of the possibility of widespread hostility in at least some school districts if immediate integration of the races in the public schools is required by this Court. This hostility is commonly known to exist in varying degrees in a majority of the school districts of Arkansas although there have been, so far as is known, no overt acts by any particular group or groups indicating open defiance of the law as declared by this Court.

But even unwilling or hostile compliance can, and probably would, have a most undesirable effect upon the whole system of public education in Arkansas. It will be conceded, presumably, that the bulk of the financial support for the public school system of Arkansas flows from the white population. This fact will continue to be true for many years to come unless a large portion of those persons who now pay taxes in support of public schools manage, by some means not now forseeable, to withdraw their

support as a result of legislative enactments of some kind or other.

Without the leadership of those who carry the large portion of the burden of supporting the school system, the system as a whole is bound to pass through a period of deterioration which might last for many, many years. If the public school system is permitted to deteriorate, it necessarily follows that both the negro children and the white children will be the unfortunate victims. The negro children in all probability will suffer to a greater degree than the white children in such circumstances.

The Arkansas public school system today ranks far down the list in many respects in comparison with the systems of other states. There is a long way to go before Arkansans can point with pride to their school system as a whole. But no well-informed person will seriously contend that Arkansas has not made measurable progress during the past few years. Every well-informed person in Arkansas agrees with this Court when it said that "today, education is perhaps the most important function of state and local governments" and education "is the very foundation of good citizenship." *Brown Case, supra.*

The executive, legislative and judicial branches of the State government have for years pointed up the school problem as the most important problem confronting the people of this State. It is well within the realm of possibility that any decree of this Court at this time which would have the legal effect of ordering immediate integration of the races in all the school districts of Arkansas would disrupt the financing, management and control of the school system for many years.

A recognized authority on the sociological aspects of school segregation has said:

> "Finally, there is the hard fact that integration in a meaningful sense cannot be achieved by the mere physical presence of children of two races in a single classroom. No public school is isolated from the community that supports it, and if the very composition of its classes is subject to deep-seated and sustained public disapproval it is hardly likely to foster the spirit of united effort essential to learning. Even those who are dedicated to the proposition that the common good demands the end of segregation in education cannot be unaware that if the transition produces martyrs they will be the young children who must bear the brunt of spiritual conflict." Ashmore, "The Negro and the Public Schools," (Chapel Hill 1954) p. 135.

It would unduly extend this discussion to take up the problems of grade requirements, transportation problems, revision of school area distribution and the many other complex management problems which will ultimately have to be solved in bringing about complete integration in Arkansas. This Court has already indicated by the opinion in the *Brown Case* and by the study which the Court has obviously given to these cases that it is fully aware of the complexity of the problem. This Court has not asked for a statement of the problem, but rather for a solution.

What has been said is, of course, addressed to the discretion of this Court in the exercise of its equity powers in the four cases now pending before it. It is believed that this complex problem can be solved most effectively and most satisfactorily in the interest of both the negro children and the white children by a gradual, rather than an immediate, adjustment or transition from segregation to integration of the races in the public schools.

There are, of course, many decisions of this Court pointing out the peculiar nature of equity practice. In the interest of brevity, it is appropriate to point to the

opinion of Mr. Justice Douglas in *Hecht Co.* v. *Bowles*, 321 U. S. 321, 329, where the Court said:

> "We are dealing here with the requirements of equity practice with a background of several hundred years of history. Only the other day we stated that 'An appeal to the equity jurisdiction conferred on federal district courts is an appeal to the sound discretion which guides the determination of courts of equity', *Meredith* v. *Winter Haven*, 320 U. S. 228, 235. The historic injunctive process was designed to deter, not to punish. The essence of equity jurisdiction has been the power of the Chancellor to do equity and to mould each decree to the necessities of the particular case. Flexibility rather than rigidity has distinguished it. The qualities of mercy and practicality have made equity the instrument for nice adjustment and reconciliation between public interest and private needs as well as between competing private claims."

This Court also held in *International Salt Co.* v. *United States*, 332 U. S. 392, that district courts are invested with large discretion in modeling their judgments to fit the exigencies of the particular case, and the framing of decrees should take place in the district rather than appellate courts.

Point 2

The Court Should Enter a Decree in the Pending Cases Which Will Permit Gradual Adjustments

The pending cases have been designated as class actions by the Court. The principal matter about which the people of Arkansas are concerned is the binding effect of the impending decrees on prospective or pending litigation of similar nature in the federal courts of Arkansas.

It is believed that the decree of this Court in the *Briggs Case*, for example, would not have the effect of an adjudi-

cation of pending or prospective similar actions in the federal courts of Arkansas. That decree would be a precedent to be followed by the federal courts in Arkansas only to the extent that the *Briggs* decree would permit the federal court in Arkansas in equity to follow the procedural scheme provided for in the *Briggs* decree.

The ultimate solution of the complex problem of transition is undoubtedly one which calls for "flexibility rather than rigidity." *Hecht Co.* v. *Bowles, supra.*

In framing its decrees in the pending cases, it is deemed proper for this Court to consider the opinion of Judge Harry J. Lemley in *Pitts* v. *Board of Trustees of DeWitt Special School District No. 1*, 84 F. Supp. 975 (E. D. Ark.). That case asserted the rights of negro plaintiffs to equal public school facilities under the Fourteenth Amendment to the United States Constitution. The Court followed the "separate but equal doctrine" of *Plessy* v. *Ferguson*, 163 U. S. 537, and held that the negro children were entitled under the Amendment to school facilities substantially equal to the school facilities afforded white children. Judge Lemley was there confronted, as the Court is here, with the terms and the scope of the decree to be entered under his findings of fact and conclusions of law. In solving this perplexing problem, Judge Lemley said, 84 F. Supp. at 983:

> "The instant suit is one in equity, and the bill is addressed to the court sitting as a court of equity. Hence the court has a wide discretion in determining what relief is proper and prescribing the time within which such relief must become effective. The case at bar is not the only one of this nature upon the court's docket and, in connection with our discussions and holdings herein, it should be borne in mind that each of these cases stands on its own peculiar facts; relief which might be proper in one

> case might not be sufficient in another, and the length of time allowed to a district within which to bring about an equalization of educational facilities which might be reasonable in one case could be unreasonable in another."

In the same opinion, Judge Lemley further said, 84 F. Supp. at 988:

> "We are not going to attempt to say what a 'reasonable time' in this case will be; that is a matter properly left, for the time being, to the good faith and discretion of the Board. If the Board is dilatory, the plaintiffs are not without their remedy in the Courts."

The problem before Judge Lemley was, in effect, the same as now confronts this Court in the framing of its decrees. Judge Lemley decided that the negro children were entitled to separate but equal facilities. This Court has decided that the negro children in the instant cases are entitled to identical facilities, subject only to classification not based on race. Judge Lemley was confronted with a transition from unequal to equal facilities. This Court is confronted with a transition from separate to identical facilities.

It seems obvious that Judge Lemley adopted the logical and equitable solution of the problem before him. It appears also that this Court could find no better solution of its problem in the instant cases than remanding the four cases to the courts of first instance for adoption, in substance, of the language of Judge Lemley in the *Pitts Case, supra.*

It is contended, therefore, that the Court should enter a decree in each of the pending cases which will read substantially as follows:

"The case is remanded to the court of first instance with directions to enter such orders and decrees as are necessary and proper and not inconsistent with the opinion of this Court in this case. In exercising its jurisdiction upon remand, the court of first instance is left free to hold hearings, through a Special Master of the court if deemed necessary or appropriate, to consider and determine what provisions are essential, proper and appropriate to afford appellants and those similarly situated full protection against segregation of negro children in the public schools solely on the basis of race in violation of their rights under the Fourteenth Amendment to the United States Constitution." *Terry* v. *Adams*, 345 U.S. 461, 470.

POINT 3

The Court Should Leave the Problem of Integration of the Races in Public Schools to Congress for Appropriate Legislation

Even if the Court remands the pending cases with directions as suggested, there still remains the uncertainty of the immediate effect which those decrees may have on prospective cases in the federal courts in Arkansas. The Court must of necessity make some disposition of the pending cases by way of appropriate decrees. In this connection it is most respectfully urged that the Court take some action by way of a supplemental opinion, in addition to the specific decrees, which will have the effect of precluding what might well turn out to be a flood of cases in the federal courts of Arkansas and other so-called "segregated states."

The point here is that this Court can and should deal with the problem by way of supplemental opinion in such a way that the whole problem of solving the method of integration should fall squarely where the Fourteenth

Amendment says it should fall; that is, on Congress for appropriate enactment.

In its opinion of May 17, this Court has definitely and finally decided that the separation of the races in public schools pursuant to state laws on a basis of race violates the Equal Protection Clause of the Fourteenth Amendment. The law having thus been interpreted and declared by this Court for the first time, it now becomes the function and the constitutional duty of Congress to exercise the power granted by Section 5 of the Fourteenth Amendment.

Section 5 of the Fourteenth Amendment is as follows:

> "The congress shall have power to enforce, by appropriate legislation, the provisions of this article."

It might be well to mention at the outset that it is fully recognized that "it is not for this Court to compete with Congress or attempt to replace it as the Nation's law-making body," *Collins* v. *Hardyman*, 341 U. S. 651, 663, and that "the judiciary may not, with safety to our institutions, enter the domain of legislative discretion and dictate the means which Congress shall employ in the exercise of its granted power. That would be sheer usurpation of the functions of a coordinate department, which, if often repeated, and permanently acquiesced in, would work a radical change in our system of government." Mr. Justice Harlan dissenting in *The Civil Rights Cases*, 109 U. S. 3, 51.

Nevertheless, it would certainly not be entirely without precedent for this Court to point out to Congress, as urged here, the necessity for "appropriate legislation"; especially in view of the known fact that the prolonged inaction by Congress has now resulted in a condition which has some aspects at least of a national emergency.

As a matter of pertinent history, it is very significant that the legislative records of Congress in promulgating the Fourteenth Amendment and of state legislatures in ratifying it have very little to say about racial segregation in public schools. It is, however, a matter of record that Senator Charles Sumner of Massachusetts appears to have strenuously but unsuccessfully advocated implementing legislation under Section 5 of the Fourteenth Amendment which would have been a specific and far-reaching proscription of racial segregation in the public schools. *Cong. Globe*, 42 Cong., 2d Sess. 383-84 (1872).

By way of contrast, it is quite obvious from a reading of the Court's opinion in the *Brown Case* that, in arriving at its decision, the Court took full cognizance of contemporary conditions in the field of public education as compared with conditions existing at the time of and for many years subsequent to 1868. This Court said, 347 U. S. 492:

> "In approaching this problem, we cannot turn the clock back to 1868 when the Amendment was adopted, or even to 1896 when *Plessy* v. *Ferguson* was written. We must consider public education in the light of its full development and its present place in American life throughout the Nation . . . .
>
> "Today, education is perhaps the most important function of state and local governments . . . . In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of education."

The Court having pointed out so forcibly the evolving concept of the Fourteenth Amendment, it would seem to follow as a necessary conclusion that the Court should now (by way of an additional opinion) not only nudge but even exhort Congress to enact appropriate legislation under the power of Section 5 of the Amendment.

This Court could with complete propriety point out to Congress that legislative action is a necessity and that such necessity is a result of extending inaction by Congress. If Congress responds to the urgent invitation of the Court (and there are many reasons for believing that it will), then it will be performing the mandate of the people which is incorporated in Section 5 of the Amendment.

This Court in *The Civil Rights Cases*, 109 U. S. 3, 11, said that, under Section 5 of the Amendment, Congress is empowered

> "To adopt appropriate legislation for correcting the effects of such prohibited State laws and State acts, and thus to render them effectually null, void, and innocuous."

And in the same cases this Court said, 109 U. S. 14:

> "It is not necessary for us to state, if we could, what legislation would be proper for Congress to adopt. It is sufficient for us to examine whether the law in question is of that character."

In his very forceful dissenting opinion in *The Civil Rights Cases*, Mr. Justice Harlan said,

> "The legislation which Congress may enact, in execution of its power to enforce the provision of the amendment, is such as may be appropriate to protect the right granted. The word appropriate was undoubtedly used with reference to its meaning, as established by repeated decisions of this court. Under given circumstances, that which the court characterizes as corrective legislation might be deemed by Congress appropriate and entirely sufficient. Under other circumstances, primary direct legislation may be required. But it is for Congress, not the judiciary, to say that legislation is appropriate—that is—best adapted to the end to be attained."

The conclusion to be drawn from the decision in *The Civil Rights Cases* is that the "appropriate legislation" contemplated by Section 5 is co-extensive with and just as important a part of the Fourteenth Amendment as is Section 1 which declares the rights of all persons to equal protection under the laws. Therefore, whatever action Congress sees fit to take in the light of this Court's decision would rest upon the judgment of Congress; provided, of course, that such legislation is directed against state action. As Mr. Chief Justice Marshall said in *United States* v. *Fisher*, 6 U.S. 358:

> "Let the end be legitimate, let it be within the scope of the Constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consistent with the letter and spirit of the Constitution, are constitutional."

Mr. Justice Frankfurter, concurring in *McCollum* v. *Board of Education*, 333 U. S. 203, 212, said that the case

> ". . . demonstrates anew that the mere formulation of a relevant Constitutional principle is the beginning of the solution of a problem, not its answer." And in the same case, Mr. Justice Jackson, concurring, said, 33 U.S. at 237: 'It is idle to pretend that said, 333 U. S. at 237: 'It is idle to pretend that this task is one for which we can find in the Constitution one word to help us as judges to decide where the secular ends and the sectarian begins in education. Nor can we find guidance in any other legal source. It is a matter on which we can find no law but our own prepossessions. If with no surer legal guidance we are to take up and decide every variation of this controversy, raised by persons not subject to penalty or tax but who are dissatisfied with the way schools are dealing with the problem, we are likely . . . to make the legal "wall of separation between church and state" as winding as the

> famous serpentine wall designed by Mr. Jefferson for the University he founded.' "

This Court in the *Brown Case* arrived merely at the "formulation of a relevant Constitutional principle." This Court should invoke immediate action by Congress to declare and solve the variations of the controversy which are prevalent in the so-called "segregated states" — particularly in Arkansas.

Again it is appropriate to refer to the opinion of Judge Lemley in his "separate but equal" decision, *Pitts* v. *Board of Trustees*, where he said, 84 F. Supp. at 988:

> "In the last analysis, this case and others like it present problems which are *more than judicial* and which involve elements of public finance, school administration, politics and sociology . . . . The federal courts are not school boards; they are not prepared to take over the administration of the public schools of the several states; nor can they place themselves in the position of censors over the administration of the schools by the duly appointed and qualified officials thereof, to whose judgment and good faith much must be left." See also *Minersville School Dist.* v. *Gobitis*, 310 U. S. 586.

In the Pitts Case and other *"equal facilities"* cases like it, the Court had before it, insofar as enforcement is concerned, a much less complicated problem than the present problem of integration of races. The magnitude and complexity of the integration problem dictates a legislative solution.

In the enactment of appropriate legislation under Section 5 of the Amendment, Congress could, and probably would, recognize the necessity of allowing school officials wide latitude of administrative discretion under the supervision of a federal agency which would guarantee ultimate integration. Congress could make adequate provi-

sions for variations in such matters as geographical peculiarities, increasing or decreasing enrollment in particular districts, ratios of enrollment as between white and negro children, population shifts and any other factors which Congress might consider to be relevant.

Under Section 5, Congress would undoubtedly have power to fix a definite future date for complete integration in the several districts which have heretofore operated under the segregated system; or Congress might provide that integration must be completed in all districts within a reasonable time — such reasonable time to be determined in the manner prescribed by Congress.

As said by Mr. Chief Justice Stone in *Coleman* v. *Miller*, 307 U. S. 433, 453,

> "The question of a reasonable time in many cases would involve, as in this case it does involve, an appraisal of a great variety of relevant conditions, political, social and economic, which can hardly be said to be within the appropriate range of evidence receivable in a court of justice and as to which it would be an extravagant extension of judicial authority to assert judicial notice as the basis of deciding a controversy with respect to the validity of an amendment actually ratified. On the other hand, these conditions are appropriate for the consideration of the political departments of the Government. The questions they involve are essentially political and not justiciable. They can be decided by Congress with the full knowledge and appreciation ascribed to the national legislature of the political, social and economic conditions which have prevailed during the period since the submission of the amendment."

It is submitted that so long as Congress confines its "corrective" legislation to state action which infringes the Equal Protection and Due Process Clauses of the

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PART THREE

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Fourteenth Amendment, Congress would be the "guardian of its own conscience" as to what legislation on the school integration subject is more or less "appropriate." In fact, it has been noted that in other fields it has not been uncommon for Congress to leave detailed administration to state control and discretion so long as such control and discretion are kept within the framework dictated by federal law. *Steward Machine Co.* v. *Davis*, 301 U. S. 548, and *Parker* v. *Brown*, 317 U. S. 341.

The Constitution has conferred upon Congress the power to secure equal educational opportunities in the public schools for all children regardless of race. If Congress has failed and should continue to fail in exercising its powers whereby equal educational opportunity is denied by reason of state laws "the remedy will ultimately be with the people." "The Constitution has left the performance of many duties in our governmental scheme to depend on the fidelity of the executive and legislative action and, ultimately, on the vigilance of the people in exercising their political rights." *Colegrove* v. *Green*, 328 U. S. 549, 556.

It is a matter of particular interest here that on the very same day this Court decided the school segregation cases (May 17, 1954) the Court also decided a very important case arising under the Federal Tort Claims Act, 60 Stat. 842. The case was *United States* v. *Gilman*, 347 U. S. 507. In construing the act, the unanimous Court, through Mr. Justice Douglas said, 347 U. S. at 511.

> "Here a complex of relations between federal agencies and their staffs is involved. Moreover, the claim now asserted, though the product of a law Congress passed, is a matter on which Congress has not taken a position. It presents questions of policy on which Congress has not spoken. The selection of that policy, which is most advantageous to the whole, involves a host of considerations that must

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> be weighed and appraised. That function is more appropriately for those who write the laws, rather than those who interpret them."

In the instant cases the Court is most certainly dealing with "a complex of relations" between the federal government on the one hand and the state governments on the other. The specific problem of implementing Section 1 of the Fourteenth Amendment as interpreted by this Court is a matter on which Congress has not taken a position over a period of eighty-six years and presents serious "questions of policy." The selection of policy relating to the integration of the races in public schools "involves a host of considerations that must be weighed and appraised." This Court should, in some appropriate manner, leave the details of the solution of the problem "to those who write the laws."

CONCLUSION

The point which is urged here with most emphasis is that a decree of this Court ordering *immediate* integration of the white and negro children would have a most disastrous effect upon the public school system of Arkansas. Likewise, it would most seriously disrupt the efforts of the leaders of both races in solving the racial problem in Arkansas in all its various aspects. No person or court can predict at this time what the consequences would ultimately be. There is no need for immediate integration in the public schools. It is not required by the Constitution.

The problem of integration of races in the public schools is of such magnitude that it can be solved effectively only by a *gradual* process which would vary from locality to locality. It is probably safe to assert at this time that no person or group of persons — not even any court — has formulated any definite plan of integration

Appendix A

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which would operate successfully in the school districts of Arkansas. As to the four cases now before the Court, the plan for integration in the districts which would be directly affected by those cases must, for the time being at least, be formulated, developed and finally concluded under the supervision and control of the courts of first instance. The decrees of this Court should accord to the lower courts the very widest range of discretion in bringing about integration in a manner which will promote, rather than retard the ultimate solution of the whole problem.

Finally and most earnestly, it is urged that this Court, by a supplemental opinion, point out in no uncertain terms that the integration problem is one which should be solved by Congress under Section 5 of the Fourteenth Amendment. The American system of government being what it is, this Court cannot compel Congress to act. But certainly this Court can, by some appropriate suggestion, bring about prompt and appropriate action by that branch of the government in which the people themselves, by adoption of the Fourteenth Amendment, lodged the power to adopt the appropriate plan to correct the conditions which, so this Court has said, the states have brought about in violation of the Amendment.

If the powers of this Court were not limited by the Constitution, the proper decrees of this Court in the pending cases would be to "remand the cases" *to Congress* with directions to take appropriate action. Lacking the power to *command* Congress, the next best thing would be a most urgent *invitation* to Congress from this Court. It is such a course which this Court is asked to adopt to the very limit of its power. If the Court complies with this request, then the solution of the problem will rest where it

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was intended by the Constitution that it should rest—with the Congress.

November 15, 1954.

Respectfully submitted,

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APPENDIX

ARKANSAS SCHOOL ENROLLMENT

1953-54 SESSION

COUNTY	Enrollment White	Negro	Total	Annual Receipts	Annual Disb'mts
Arkansas . . .	3,630	1,360	4,990	$ 891,277	$ 732,917
Ashley	3,963	2,367	6,330	1,018,902	895,782
Baxter	2,148	xxx	2,148	326,545	286,029
Benton	7,443	1	7,444	1,199,694	1,046,447
Boone	3,516	xxx	3,516	488,271	483,435
Bradley	2,064	932	2,996	479,622	454,240
Calhoun	1,056	592	1,648	286,115	263,004
Carroll	2,240	xxx	2,240	330,165	315,957
Chicot	2,461	3,053	5,514	837,044	666,743
Clark	3,430	1,569	4,999	719,768	644,724
Clay	5,899	xxx	5,899	712,092	695,944
Cleburne . . .	2,466	xxx	2,466	273,697	257,370
Cleveland . . .	1,546	526	2,072	353,646	333,275
Columbia . . .	3,679	2,807	6,486	1,010,188	927,011
Conway	2,721	1,211	3,932	535,174	489,141
Craighead . . .	11,264	295	11,559	1,502,603	1,389,577
Crawford . . .	5,147	87	5,234	647,874	635,714
Crittenden . .	4,012	6,909	10,921	1,254,324	1,052,578
Cross	4,106	1,985	6,091	797,101	731,553
Dallas	1,659	1,221	2,880	467,792	430,774
Desha	3,426	3,078	6,504	824,451	730,117
Drew	2,237	1,366	3,603	544,724	463,941
Faulkner . . .	3,981	612	4,593	633,314	620,258
Franklin . . .	3,033	38	3,071	408,118	376,237
Fulton	1,723	xxx	1,728	243,406	232,057
Garland	8,045	910	8,955	1,449,747	1,392,016
Grant	2,121	203	2,324	381,496	364,546
Greene	6,608	xxx	6,608	856,064	781,482

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ARKANSAS SCHOOL ENROLLMENT

1953-54 SESSION

COUNTY	Enrollment White	Negro	Total	Annual Receipts	Annual Disb'mts
Hempstead . .	2,965	2,355	5,320	783,593	707,316
Hot Spring . .	4,860	744	5,604	1,020,340	877,411
Howard	2,333	809	3,142	511,605	449,967
Ind'p'nd'nce .	4,723	77	4,800	637,999	593,318
Izard	2,093	14	2,107	240,407	224,549
Jackson	5,005	904	5,909	824,448	766,556
Jefferson . . .	8,869	8,025	16,894	2,353,543	2,033,288
Johnson	3,159	41	3,200	450,995	434,097
Lafayette . . .	1,629	1,614	3,243	560,538	480,749
Lawrence . . .	4,857	55	4,912	732,762	670,184
Lee	2,316	3,552	5,868	626,368	537,960
Lincoln	1,744	1,887	3,631	544,104	470,376
Little River .	1,799	964	2,763	438,760	393,134
Logan	3,230	169	3,399	558,614	482,709
Lonoke	4,518	1,428	5,946	829,476	723,716
Madison	2,640	xxx	2,640	277,237	266,346
Marion	1,516	xxx	1,516	254,566	232,608
Miller	5,927	2,106	8,033	1,143,452	1,027,337
Mississippi . .	13,218	4,789	18,007	2,366,353	2,302,446
Monroe	2,394	2,176	4,570	526,483	483,524
Montgomery	1,416	3	1,419	284,030	232,634
Nevada	1,893	1,498	3,391	588,702	494,588
Newton	1,946	xxx	1,946	220,148	212,226
Ouachita . . .	4,781	3,637	8,418	1,336,720	1,095,448
Perry	1,297	48	1,345	221,272	190,383
Phillips	4,294	6,409	10,703	1,132,056	1,036,507
Pike	2,003	74	2,077	348,979	304,222
Poinsett	8,022	694	8,716	1,035,175	972,903
Polk	2,931	xxx	2,931	534,865	439,619
Pope	4,270	123	4,393	608,356	589,653

ARKANSAS SCHOOL ENROLLMENT

1953-54 SESSION

COUNTY	Enrollment White	Negro	Total	Annual Receipts	Annual Disb'mts
Prairie	2,296	575	2,871	433,500	413,484
Pulaski	27,695	9,088	36,783	6,413,057	5,871,522
Randolph . . .	2,808	31	2,839	374,322	337,164
Saline	4,800	88	4,888	791,254	729,381
Scott	1,564	xxx	1,564	295,193	254,689
Searcy	2,200	xxx	2,200	278,123	266,129
Sebastian . . .	12,400	903	13,303	2,138,442	2,023,826
Sevier	2,264	264	2,528	479,528	376,536
Sharp	2,345	xxx	2,345	328,387	308,232
St. Francis . .	3,740	5,300	9,040	948,998	886,075
Stone	1,590	xxx	1,590	194,428	182,477
Union	7,524	4,325	11,849	2,264,543	1,892,648
Van Buren . .	1,960	17	1,977	268,505	256,415
Washington .	9,299	64	9,363	1,262,843	1,213,977
White	7,817	302	8,119	1,230,306	1,160,193
Woodruff . . .	2,552	1,946	4,498	553,958	544,544
Yell	2,910	90	3,000	539,774	477,755
TOTAL	314,041	98,310	412,351	$60,261,321	$54,618,690

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1954

No. 1 etc.

OLIVER BROWN, ET AL.,
Appellants,
v.
BOARD OF EDUCATION OF TOPEKA, SHAWNEE COUNTY, KANSAS, ET AL.

HARRY BRIGGS, JR., ET AL.,
Appellants,
v.
R. W. ELLIOTT, ET AL.

DOROTHY E. DAVIS, ET AL.,
Appellants,
v.
COUNTY SCHOOL BOARD OF PRINCE EDWARD COUNTY, VIRGINIA, ET AL.

FRANCES B. GEBHART, ET AL.,
Petitioners,
v.
ETHEL LOUISE BELTON, ET AL.

AMICUS CURIAE BRIEF OF THE ATTORNEY GENERAL OF FLORIDA

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1954

No.....

OLIVER BROWN, ET AL.,
Appellants,
v.
BOARD OF EDUCATION OF TOPEKA, SHAWNEE COUNTY, KANSAS, ET AL.

HARRY BRIGGS, JR., ET AL.,
Appellants,
v.
R. W. ELLIOTT, ET AL.

DOROTHY E. DAVIS, ET AL.,
Appellants,
v.
COUNTY SCHOOL BOARD OF PRINCE EDWARD COUNTY, VIRGINIA, ET AL.

FRANCES B. GEBHART, ET AL.,
Petitioners,
v.
ETHEL LOUISE BELTON, ET AL.

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Preliminary Statement

This amicus brief filed by the Attorney General of the State of Florida pursuant to permission granted by the Court in its decision of May 17, 1954, in the above cases, contends that the Court should resolve its implementation decision in favor of the propositions stated in questions 4B and 5D.

The Court will find from a study of this brief that a sincere and thorough effort has been made by the Attorney General of Florida to present reasonable and logical answers to questions 4 and 5. These answers are respectfully submitted by way of assistance to the Court and are based upon a scientific survey of the factual situation in Florida, embracing practical, psychological, economic and sociological effects, as well as an exhaustive research of legal principles.

However, in filing this brief in answer to the hypothetical questions propounded, the Attorney General is not intervening in the cause nor is he authorized to submit the State of Florida as a direct party to the instant cases. Neither can his brief preclude the Florida legislature or the people of Florida from taking any legislative or constitutional action dealing with the segregation problem.

Part One

A discussion of the reasons for a period of gradual adjustment to desegregation to be permitted in Florida with broad powers of discretion vested in local school authorities to determine administrative procedures.

A. The Need For Time In Revising The State Legal Structure

There is a need for reasonable time and planning by State and local authorities in any revision of the existing legal structure of the State of Florida, (which now provides an administrative framework for the operation of a dual system of public schools) in order to provide a legal and administrative structure in which compliance with the Brown decision can be accomplished in an orderly manner.

Examples of Florida constitutional, statutory, and state school board regulatory provisions related directly or indirectly to segregated public schools are set forth in Appendix B.

The basic change which must be made if Florida is to comply with the non-segregation decision is either a repeal or revision of Article XII, Section 12, of the Florida Constitution, which provides:

> "*White and colored; separate schools.*—White and colored children shall not be taught in the same school, but impartial provision shall be made for both."

This provision in the basic law of Florida has been in existence since 1885. During the past 69 years it has been rigidly observed and has provided the foundation for an intricate segregated public school system, in accord with social customs which cannot be changed overnight without

completely upsetting established school administrative procedure in school planning, transportation, teacher employment, capital outlay, districting, scholastic standards, public health, school discipline as well as many other facets of the tremendously complicated school structure in Florida.

Assuming that the basic law of Florida pertaining to a dual system of schools (Art. XII, Section 12, of the Florida Constitution) is rendered nugatory by the decision of this court in the Brown case, the Florida legislature must revise the entire School Code of Florida to the extent that the present code is predicated upon a dual system of education, and all administrative procedures which have developed under said code are grounded on the fundamental principle of a segregated system. A simple repeal of the various statutory and administrative procedures now provided for the operation of the school system (which may prove to be in conflict with the Brown decision) could only result in the creation of a vacuum in methods of school administration. The consequent immediate inrush of turbulent ideas into this vacuum without legal guidance or administrative regulation might well cause a tornado which would devastate the entire school system.

This system has grown through the years since the establishment of the "separate but equal" doctrine by the Court in the *Plessy v. Ferguson case (163 U.S. 537)*, into a mammoth and intricate system of public education in Florida involving the annual expenditure of $138,895,123.15 and the welfare of 650,285 children. We do not believe that this system, which took over half a century to develop, can be transformed overnight.

The bare mechanical process of enacting legislation requires reasonable time for study by legislative committees, the time depending upon the complexity of the problem, and must conform to the legally established time for convening the legislature. On a problem of the magnitude of the one at

issue, the study of legislative committees must be preceded by exhaustive study on the part of school officials and citizens' educational committees in order that the legislature may have the benefit of their recommendations.

I. EXAMPLES OF LEGISLATIVE PROBLEMS

(a) Scholarships

An example of the type of legislative problem which must be considered by school officials and the legislature is contained in Section 239.41, Florida Statutes.[1]

This law at present provides for 1,050 scholarships of $400 each year for students desiring to train for the teaching profession.[2]

According to the State Department of Education, awarding of the scholarships is done on a basis of county representation, race, and competitive test scores of psychological and scholastic aptitude. A compilation of the scores of the 740 white twelfth grade applicants in the Spring of 1954 yielded an average score of 340. Compilation of the 488 Negro twelfth grade applicants yielded an average score of 237. In the previous year, 1953, 664 white applicants made an average score of 342 while the Negro applicants made an average score of 237. This difference is classified as very significant, and should be interpreted as meaning that factors other than chance explain the different results between white and Negro scores.

In view of the wide divergence in achievement levels between the white and Negro races, as demonstrated by the scholarship examinations, and desiring to make these scholarship opportunities available to students of both races, it

1. See page 218, Appendix B.
2. See page 235, Appendix B.

was recognized that provision would have to be made whereby Negro students would not have to compete against white students for these awards. Therefore, the legislature of Florida provided that the scholarships should be apportioned to white and Negro applicants according to the ratio of white and Negro population in the counties. Only in this way can Negro students in this state be assured of receiving a proportionate share of state scholarships awarded on the basis of competitive examinations.

If the Court's decision in the Brown case is to be interpreted that no distinction can be made on the basis of race in the operation of Florida's school system, it is apparent that Section 239.41, Florida Statutes, will have to be revised if the state is to continue its policy of encouraging Negro as well as white students to enter the teaching field.

It is apparent that the overall problem of teacher shortages cannot be solved immediately by law. It can be solved eventually by provisions such as Section 239.41, Florida Statutes, which is calculated to encourage a larger number of people to qualify themselves as teachers. If Section 239.41, Florida Statutes, is revised, however, to preclude immediately any recognition of a difference in scholastic achievement between Negro and white applicants for teacher scholarships, such revision would make it virtually impossible for the great majority of Negro students in Florida to receive scholarships, and from an economic standpoint they form the group of potential teachers who need such assistance most.

The problem can be solved, however, by time, without working an undue hardship on Negro students or creating an even greater shortage of teachers in Florida.

Dr. Gilbert Porter, Executive Secretary of Florida State Teachers Association had this to say on the subject in addressing a meeting of Negro teachers in Tallahassee on August 19, 1954:

"It is of no avail to blind ourselves to the marked difference in scholastic achievement between white and Negro students. This difference is not our fault, but it is there and must be recognized. If the doors to the state white universities were thrown open to Negro students today, it would make little difference because a great majority of Negro students could not pass an impartial entrance examination. We, as Negro teachers, can provide the only solution to this dilemma if given a reasonable amount of time, but it will mean an absolute dedication to his work on the part of every Negro teacher. Negro teachers can close the gap between Negro and white students if they will work hard enough. We have come a long way already in closing that gap and it can be closed completely within the foreseeable future if we will work hard enough. Any Negro teacher who is not willing to dedicate himself to this purpose should step out of the way because he is standing in the way of the progress of our race. Either we must remove this difference in scholastic standing or admit that we are inferior—and I will die and go to the hot place before I will ever admit that I am inferior."

Whatever is done by school officials and the Florida legislature to fit the Florida teacher scholarship act (Sec. 239.41, Florida Statutes) into the framework of the new concept of a non-segregated school system enunciated by the Court, should take into consideration the human rights and legal equities of members of the Negro race who would like to enter the one professional field which is now open to them on a large scale, and which they are now not only invited but urged to enter on a basis of absolute economic and professional equality. A strict legal application of the principle that no distinction can be made on the basis of race in public schools would necessarily have to ignore practical and human factors as they now exist which are of fundamental importance to the operation of a public school system in Florida. One thing is apparent. No equi-

table and workable solution can be found unless sufficient time is permitted by the Court in the application of its decree abolishing segregated schools, to allow for an abatement of the problems involved and an equitable adjustment by the school system to so drastic a change in its basic structure.

(b) Powers and Duties of County School Boards

The problems which will necessarily confront the Florida legislature in revising the provision of Section 230.23, Florida Statutes,[1] alone, are so involved and complicated if practical questions of school administration are to be considered, that no immediate solution is feasible.

Section 230.23, Florida Statutes, provides the powers and duties of county school boards and establishes a framework within which they may authorize schools to be located and maintained. It provides in part:

> "Authorize schools to be located and maintained in those communities in the county where they are needed to accommodate as far as practicable and without unnecessary expense all the youth who should be entitled to the facilities of such schools, separate schools to be provided for white and Negro children; and approve the area from which children are to attend each such schools, such area to be known as the attendance area for that school . . . "

Bearing in mind that this provision of the law has been followed throughout the development of the Florida school system and the location of schools decided in accord with its intent, a simple repeal of this provision would provide no systematic guide or formula for local school boards to follow in attempting to redesign and reorganize the dual sys-

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1. See page 217, Appendix B.

tem now in operation, which at present involves real estate estimated to be valued at $300,000,000 and a current building program now under way involving from $90,000,000 to $100,000,000,[1] into a single non-segregated system.

The conversion of this $300,000,000 school plant into a non-segregated system will clearly take a great deal of planning if the old primary factor of racial segregation is removed in school location, construction and operation.

The State Department of Education reports[2] that:

> "Florida provides annually $400 per instruction unit for Capital Outlay needs which for the 67 counties totaled $9,451,600 in 1953-54 and has been computed at $10,199,448 for the 1954-55 estimate. This money is spent in each county according to the needs recommended by a state-conducted school building survey. With the help of these individual county surveys it was estimated as of January, 1954 that $97,000,000 will be needed to provide facilities for white children and $50,000,000 will be needed to provide facilities for Negro children. Since the activation as of the effective date January 1, 1953 of a Constitutional Amendment providing for the issuance of revenue certificates by the State Board of Education against anticipated state Capital Outlay funds for the next thirty years more than $43,000,000 in state guaranteed bonds have been issued to provide additional facilities for both races. By the fall of 1954 there will have been a total of $70,000,000 of these bonds issued and in the foreseeable future the total will be $90,000,000 to $100,000,000. At the present time 2182 classrooms are under construction as a result of the issuance of these bonds."

The planning included in making necessary surveys, acquisition of sites, financing and engineering involved in the present construction program, although performed at top speed under the compulsion of a critical shortage of school

1. See page 188, Appendix A.
2. See page 187, Appendix A.

buildings in Florida, is a continuing process and requires several years to carry out successfully.

Much of this school planning with regard to the allocation and use of existing structures as well as new construction will have to be re-evaluated and revised in accord with the entirely new and basic change to a non-segregated system.

These facts, when considered in the light of the overcrowded conditions now prevailing in many Florida schools, must be studied by the legislature and school officials in any effort to provide adequate administrative means of complying with the Court's decision. According to the State Department of Education, during the school year 1953-54, *eighty-one schools in 18 Florida counties were forced to operate double sessions because of the lack of classroom space and trained teachers.* In many instances to integrate immediately in particular schools would mean overcrowding of school facilities resulting in serious administrative problems too numerous to detail.

When these problems are further complicated by the drastic change in the legal framework of segregated schools in Florida, it is apparent that such factors should be recognized by the Court and sufficient time allowed for their orderly solution.

(c) State Board of Education and State Superintendent

A third example of the complex problems which will confront school officials and the Florida legislature in revising the framework of laws within which the school system can operate efficiently in compliance with the Brown decision is found in Sections 229.07,[1] 229.08,[2] Florida Statutes, relating to the authority and rule-making powers

1. See page 215, Appendix B.
2. See page 216, Appendix B.

and duties of the State Board of Education; and Sections 229.16[3] and 229.17[4] relating to the duties of the State Superintendent of Public Instruction.

Although these provisions may not directly relate to segregated schools, they have in each instance been enacted and administered in accord with the basic provision of Florida law requiring a dual school system, and some revision will be necessary in the administrative powers granted therein in order to insure compliance with the Court's decree.

Specific problems in this regard are found in State Board Regulations adopted April 27, 1954 (page 154, State Board Regulations, page 219, Appendix B) related to the calculation of instruction units and salary allocations from the Foundation Program; State Board Regulation adopted March 21, 1950 (page 164, State Board Regulations, page 220, Appendix B), related to Administrative and Special Instructional Service; State Board Regulation adopted March 21, 1950 (page 171, State Board Regulations, page 221, Appendix B), related to units for supervisors of instruction; State Board Regulation adopted July 3, 1947 (page 28, State Board Regulations, page 226, Appendix B), related to School Advisory Committees; State Board Regulation adopted March 21, 1950 (page 148, State Board Regulations, page 228, Appendix B), related to the qualifications, duties and procedure for employment of supervisors of instruction; State Board Regulation adopted July 3, 1947 (page 156, State Board Regulations, page 232, Appendix B), related to isolated schools, State Board Regulation adopted July 21, 1953 (page 225, State Board Regulations, page 235, Appendix B), related to the distribution of general scholarships; State Board Regulation adopted July 3, 1947 (page 229, State Board Regulations, page 242, Appendix B), related to State Supervisory Services.

3. See page 216, Appendix B.
4. See page 217, Appendix B.

II. DISCUSSION OF LEGISLATIVE ATTITUDES

In setting out these examples of legislative problems which will require reasonable time for solution, we do not intend to imply that the members of the Florida legislature are at present willing to accept a desegregated school system. In fact, from such information as is now available on this point there is reason to believe that members of the Florida legislature are to a large extent unsympathetic to the Court's decision in the Brown case. A survey of leadership opinion regarding segregation in Florida conducted by the Attorney General included the following statement in the survey report (page 126, Appendix A):

> "Although the 79 members of the state legislature who returned questionnaires constitute almost 45% of the 176 legislators and legislative nominees, to whom the forms were sent, generalizations as to the entire membership of the legislature on the basis of their responses are entirely unwarranted. Any attempt to predict the action of the legislature at its next session would be even more presumptuous. The responses of these legislators to two special questions asked of them are presented below as a matter of interest, however.
>
> "The legislators were asked to indicate which of five possible courses of action should be followed at the next session of the legislature. The percentage checking each course, and the details of the five courses of action, are shown in Table 20 (Appendix A). The legislators were also asked whether they believed that there is any legal way to continue segregation in Florida schools indefinitely. Of the 79 respondents, 34.20% replied 'yes', 25.31% replied 'no' and 39.32% answered 'Don't know' or gave no answer."

Table 20, Appendix A, indicates that 40.5% of the members of the legislature who responded to the questionnaire wanted to preserve segregation indefinitely by whatever means possible.

It is even more significant that the Florida legislature in its 1951 session amended the appropriations act for the State Universities to provide that in the event Section 12 of Article 12 of the Florida Constitution shall be held unconstitutional by any court of competent jurisdiction or in the event the segregation of races as required by Section 12, Article 12 of the Florida Constitution should be disregarded, that no funds under the appropriations act shall be released to the Universities (page 683, Journal of the Florida House of Representatives, May 10, 1951). This amendment contained in Chapter 26859, General Laws of Florida, 1951, was vetoed by the Governor.

On the other hand, it is not our purpose to imply that the Florida legislature will refuse to take any action to provide a framework of laws designed to implement the Court's decision. Only the legislature itself under our form of government can determine what course of action it will pursue and we know of no way it can be coerced in making this determination except through the will of a majority of the people voiced through the ballot.

One thing seems apparent, however, under these circumstances. The Court upon equitable principles ought to extend to our legislature a reasonable period of forbearance during which the normal processes of legislative authority can be afforded time and opportunity to implement the Court's decision. The great multitude of problems the decision has created in the legal structure of our school system should warrant the Court in granting our legislature full opportunity to revise our school laws.

Such a period of forbearance is in keeping with the spirit of confidence which, under our system of democracy, is essential to maintain among the three branches of government. It is in keeping with the spirit of confidence which must be maintained between state governments and the Federation of States which has delegated to this Court

its judicial authority. A fundamental precept in the practical workings of this spirit of confidence is the use of persuasion rather than coercion or compulsion. We believe that this Court will not attempt to use its powers of coercion precipitately and prematurely against any state whose legislature has not had time to revise its basic school laws to meet the requirements of transition.

Our Florida legislature under our Constitution does not convene again until April, 1955 for its biennial 60-day session.

Even at that session there may not be known the terms of the implementation pattern, since they are dependent upon whether the Court acts prior to April, 1955. Furthermore, whether the necessary spade-work and drafting of legislation to adequately provide for the transition can be accomplished within said session is largely a matter of conjecture, so multitudinous and complex are the problems.

We reiterate: the State, having so long relied on and lived under the Plessy doctrine, should have no unseemly haste visited upon its legislature in trying to meet the needs of transition, especially when it is considered by many to be, at best, a "bitter pill" for the legislature to swallow. Rather, the reasonable, considerate and tempered course would be to allow our legislature a requisite and ample period of time to study, debate and enact implementation legislation. This we believe the court from innate principles of equity will allow.

B. The Need For Time In Revising Administrative Procedures

In addition to the problem of statutory revision, the Court should consider the need for time in adjusting the literally thousands of administrative policies and regulations of local school boards and school superintendents which have been formulated within the framework of law to meet local conditions in each of the 67 counties of Florida which will have to be revised and reorganized to conform to new legislative enactments resulting from the Brown decision. It is apparent that considerable time must be allowed before workable administrative policies of this kind can be evolved. Speaking to a group of Negro leaders in Jacksonville on July 30, 1954, Florida State School Superintendent Thomas D. Bailey, said:

> "As I see it, the ultimate problem is to establish a policy and a program which will preserve the public school system by having the support of the people. No system of public education will endure for long without public support. No program of desegregation in our public schools can be effective, unless the people in each community are in agreement in attempting it."

School board members, school trustees and school superintendents are elective officials in Florida. They are obviously well aware that any administrative policies they adopt implementing state laws enacted pursuant to the Brown decision must meet with at least some degree of acceptance on the part of the people in the community if they are to prove workable.

I. EXAMPLES

(a) Transportation

Perhaps the best example of this type of problem is the practical difficulties which will be encountered in converting the present dual school bus transportation system into a single system.

During the school year 1953-54 Florida's school system operated 2212 buses. These buses traveled 30,910,944 miles to transport 209,492 pupils at a cost of $4,506,667 (see page 186, Appendix A). These figures may be compared with Florida Greyhound Lines, the largest motor bus common carrier in Florida, which operates 175 buses in the state. A court order merging Florida Greyhound Lines with a competing line would necessarily allow a considerable period of time for revising routes and schedules to avoid duplication and insure maximum service to the public, but such a merger would be relatively uncomplicated compared to the problems involved in merging Florida's dual school bus system.

The problems of merging what amounts to two bus systems into one system without regard to race are obviously complicated. Hundreds of bus routes and schedules will have to be revised in line with the school redistricting which must take place. In accomplishing such a drastic revision of bus routes and schedules the *paramount factor in school bus transportation, i.e., safety,* must be considered at all times in the light of the fact that *discipline among the passengers is directly related to safety.* Discipline on school buses is maintained by one person, the driver. The ability of the driver to maintain discipline and a reasonable degree of safety while transporting mixed racial groups which may be antagonistic must clearly be considered in re-routing and re-scheduling school bus routes. Such consideration on the part of local school boards will require degrees

of time in direct ratio to the complexity of the local situation in relation to the size and distribution of the Negro population and the intensity of opposition to desegregated schools on the part of the citizens.

(b) Redistricting

The redistricting of school attendance areas along normal geographic lines on the basis of a single school system rather than a dual system as it now exists is another problem which will require a great deal of time in proper planning and execution.

(c) Scholastic Standards

Perhaps an even greater problem which will confront school officials on both the state and county level is the maintenance of scholastic standards in the intermingling of two groups of students so widely divergent on the basis of achievement levels. According to the State Department of Education (see page 190, Appendix A):

> "A comparison of the performance of white and Negro high school seniors on a uniform placement-test battery given each spring in the high schools throughout the State of Florida is shown in Table 4, page 196, Appendix A. The number of participants corresponds with the total twelfth grade membership during the five-year period, 1949-1953. This table shows, for example, that on all five tests 59% of the Negroes rank no higher than the lowest 10% of the whites. On the general ability scale, the fifty percentile or mid-point on the white scale corresponds with the ninety-five percentile of the Negro scale. In other words, only 5% of the Negroes are above the mid-point of the white general ability level. Studies of grades at the University of Florida indicate that white high school seniors with placement test percentile ranks below fifty have less than a 50% likelihood of making satisfactory grades in college. While factors such as size of high

school, adequacy of materials, economic level, and home environment are recognized as being contributing factors, no attempt is made here to analyze or measure the controlling factors."

In some large schools it is possible to divide students in the same age groups into different classes, taking into consideration their achievement level, but smaller schools do not have sufficient classroom space or teachers to make such a division possible. In the latter class of schools it is clear that an immediate and arbitrary intermingling of students falling into such widely divergent achievement level groups could only result in lowering the scholastic standards of the entire school and adding to the problems of discipline and instructional procedures. The Negro students would suffer if compelled to compete against white students of the same age but whose achievement level was 2 or 3 grades higher and the white students would be seriously retarded.

This problem is not insoluble and it is not advanced as a reason for permanent segregation in the schools. It is, however, a problem which must be taken into consideration by school officials in any attempt at integration of the races in the schools and it is a problem which will require careful planning, new techniques, and a great deal of time if it is to be solved without doing serious harm to both races and to the school system.

(d) Health and Moral Welfare

Still another example of school administrative problems in achieving an integrated school system is related to health and moral welfare. Writing in the Readers Digest, September, 1954, page 53, Mr. Hodding Carter, Editor and Publisher of the Delta Democrat Times, Greenville, Mississippi, said:

"If only because of economic inequalities, there is a wide cultural gap between Negro and white in the South, and especially in those states where dwell the most Negroes. These heavily Negro states are also largely agrarian. Among the rural and small-town Negroes, the rates of near-illiteracy, of communicable diseases, of minor and major crimes are far higher than among the whites. The rural Negro's living standards, though rising are still low, and he is still easy-going in his morals, as witness the five to ten times higher incidence of extramarital households and illegitimacy among Negroes than among whites in the South. The Southern mother doesn't see a vision of a clean scrubbed little Negro child about to embark on a great adventure. She sees a symbol of the cultural lags of which she is more than just statistically aware."

Specifically, with regard to Florida, the State Board of Health reports that during the year 1953 there was a total of 58,262 white births in the state, of which 1,111 were illegitimate. During this same period there was a total of 21,825 Negro births of which 5,249 were illegitimate. Percentagewise, this means that 1.9% of white births in Florida during 1953 were illegitimate and 24% of Negro births were illegitimate[1].

According to the State Board of Health there was a total of 11,459 cases of gonorrhea reported in Florida during 1953 of which 10,206 were among the Negro population.[2] We feel that this cultural gap should be honestly recognized by both white and Negro leaders as a problem requiring time for solution rather than an arbitrary and blind refusal to admit that it exists or that it is related to public school administration.

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1. Annual Report, Florida State Board of Health for 1953, Supplement No. 1, Florida Vital Statistics.
2. Annual Report, Florida State Board of Health 1953, Supplement No. 2, Florida Morbidity Statistics 1953, Table No. 5, page 25.

C. The Need For Time In Gaining Public Acceptance

There is a need for time in gaining public acceptance of desegregation because of the psychological and sociological effects of desegregation upon the community.

I. A SURVEY OF LEADERSHIP OPINION

A sincere and exhaustive effort has been made by the Attorney General of Florida to ascertain, as accurately as possible, the feelings of the people of Florida with regard to segregation in public schools. This survey was authorized by the Florida Cabinet which allocated $10,000 for the purpose. This effort was made primarily for the purpose of obtaining information which would be of use to the Court in formulating its final decree in the Brown case.

In making the survey and study, every possible precaution was taken to insure its impartiality and scientific accuracy. It was made with the advice and under the supervision of an interracial advisory committee composed of individuals chosen on the basis of their professional standing in the field of education; specialized knowledge which would be helpful in making such a study; reputation for civic-mindedness and impartiality and because they were willing to devote their time without pay in carrying out a task so enormous in scope in the brief time available. A more detailed explanation of the scientific methods and techniques employed in making this study is given with the

complete survey report itself, which is made a part of this brief and included as Appendix A. The General Conclusions of this report are as follows:

II. GENERAL CONCLUSIONS

1. On the basis of data from all relevant sources included in this study, it is evident that in Florida white leadership opinion with reference to the Supreme Court's decision is far from being homogeneous. Approximately three-fourths of the white leaders polled disagree, in principle, with the decision. There are approximately 30% who violently disagree with the decision to the extent that they would refuse to cooperate with any move to end segregation or would actively oppose it. While the majority of white persons answering opposed the decision, it is also true that a large majority indicated they were willing to do what the courts and school officials decided.

2. A large majority of the Negro leaders acclaim the decision as being right.

3. Only a small minority of leaders of both races advocate immediate, complete desegregation. White leaders, if they accept the idea that segregation should be ended eventually, tend to advocate a very gradual, indefinite transition period, with a preparatory period of education. Negroes tend to advocate a gradual transition, but one beginning soon and lasting over a much shorter period of time.

4. There are definite variations between regions, counties, communities and sections of communities as to whether desegregation can be accomplished, even gradually, without conflict and public disorder. The analysis of trends in Negro registration and voting in primary elections, shows similar variations in the extent to which Negroes have availed themselves of the right to register and vote. At least some of these variations in voting behavior must be ac-

counted for by white resistance to Negro political participation. This indicates that there are regional variations not only in racial attitudes but in overt action.

Regional, county and community variations in responses to questionnaires and interviews are sufficiently marked to suggest that in some communities desegregation could be undertaken now if local leaders so decided, but that in others widespread social disorder would result from immediate steps to end segregation. There would be problems, of course, in any area of the state, but these would be vastly greater in some areas than in others.

5. While a minority of both white and Negro leaders expect serious violence to occur if desegregation is attempted, there is a widespread lack of confidence in the ability of peace officers to maintain law and order if serious violence does start. This is especially true of the peace officers themselves, except in Dade County. This has important implications. While it is true that expressed attitudes are not necessarily predictive of actual behavior, there seems little doubt that there is a minority of whites who would actively and violently resist desegregation, especially immediate desegregation. It has been concluded from the analysis of experiences with desegregation in other areas, "A small minority may precipitate overt resistance or violent opposition to desegregation in spite of general acceptance or accommodation by the majority."[1]

6. Opposition of peace officers to desegregation, lack of confidence in their ability to maintain law and order in the face of violent resistance, and the existence of a positive relationship between these two opinions indicates that less than firm, positive action to prevent public disorder might be expected from many of the police, especially in some communities. Elected officials, county and school, also show

1. Kenneth B. Clark, "Findings," Journal of Social Issues, IX, No. 4 (1953), 50.

a high degree of opposition. Yet it has been pointed out, again on the basis of experience in other states, that the accomplishment of efficient desegregation with a minimum of social disturbance depends upon:

A. A clear and unequivocal statement of policy by leaders with prestige and other authorities;

B. Firm enforcement of the changed policy by authorities and persistence in the execution of this policy in the face of initial resistance;

C. A willingness to deal with violations, attempted violations, and incitement to violations by a resort to the law and strong enforcement action;

D. A refusal of the authorities to resort to, engage in or tolerate subterfuges, gerrymandering or other devices for evading the principles and the fact of desegregation;

E. An appeal to the individuals concerned in terms of their religious principles of brotherhood and their acceptance of the American traditions of fair play and equal justice.

It may be concluded that the absence of a firm, enthusiastic public policy of making desegregation effective would create the type of situation in which attitudes would be most likely to be translated into action.[1]

7. In view of white feelings that immediate desegregation would not work and that to require it would constitute a negation of local autonomy, it may be postulated that the chances of developing firm official and, perhaps, public support for any program of desegregation would be maximized by a decree which would create the feeling that the Court recognizes local problems and will allow a gradual transition with some degree of local determination.

8. There is a strong likelihood that many white children would be withdrawn from public schools by their parents

1. Experience shows that where the steps listed above have been taken, predictions of serious social disturbances have not been borne out.

and sent to private schools. It seems logical, however, that this practice would be confined primarily to families in the higher income brackets. As a result, a form of socio-economic class segregation might be substituted for racial segregation in education.

9. It is evident that a vast area of misunderstanding as to each other's feelings about segregation exists between the races. White leaders believe Negroes to be much more satisfied with segregation than Negroes are and Negro leaders believe that whites are much more willing to accept desegregation gracefully than whites proved to be. Hence a logical first step towards implementing the principle set forth by the Court, and one suggested by both whites and Negroes, would seem to be the taking of positive, cooperative steps to bridge this gap and establish better understanding between the two groups.

10. Although relatively few Negro leaders and teachers show concern about the problem, white answers indicate that Negro teachers would encounter great difficulty in obtaining employment in mixed schools. To the extent that desegregation might proceed without parallel changes in attitudes towards the employment of Negro teachers in mixed schools, economic and professional hardships would be worked on the many Negro teachers of Florida.

11. Since 1940, and particularly since 1947, the State of Florida has made rapid and steady progress toward the elimination of disparities between white and Negro educational facilities as measured by such tangible factors as teacher salaries, current expenditure per pupil, teacher qualifications, and capital outlay expenditure per pupil.

12. In spite of the current ambiguity as to the future of dual, "separate but equal" school facilities the State is proceeding with an extensive program of construction of new school facilities for both white and Negro pupils, with a

recommended capital outlay of $370 per Negro pupil and $210 per white pupil. Both this and the previous finding indicate that, while these steps have been taken within the framework of a dual educational system, there is a sincere desire and willingness on the part of the elected officials and the people of Florida to furnish equal education for all children.

13. Available achievement test scores of white and Negro high school seniors in Florida indicate that, at least in the upper grades, many Negro pupils placed in classrooms with white pupils would find themselves set apart not only by color but by the quality of their work. It is not implied that these differences in scores have an innate racial basis, but it seems likely that they stem from differences in economic and cultural background extending far beyond the walls of the segregated school, into areas of activity not covered by this decision.

14. Interracial meetings and cooperative activities already engaged in by teachers and school administrators in many counties demonstrate steps that can be, and are being taken voluntarily and through local choice to contribute to the development of greater harmony and understanding between whites and Negroes in Florida communities.

The specific findings of this survey regarding leadership opinion as expressed through mailed questionnaires are:

1. White groups differ greatly from each other in their attitudes towards the Court's decision, ranging from nearly unanimous disagreement to a slight predominance of favorable attitudes. (See Table 2, page 136, Appendix A)

2. White groups also differ from each other in willingness to comply with whatever courts and school boards decide to do regardless of their personal feelings. (See Table 4, page 139, Appendix A)

3. Peace officers are the white group most opposed to desegregation. (See Table 3, page 138, Appendix A)

4. Almost no whites believe that desegregation should be attempted immediately. (Table 2, page 136, Appendix A)

5. A large majority of both Negro groups are in agreement with the Court's decision declaring segregation unconstitutional. (Table 3, page 138, Appendix A)

6. While only a small minority of both Negro groups believe that desegregation should be attempted immediately, an even smaller minority would oppose attempts to bring about desegregation or refuse to cooperate. (Table 2, page 136, Appendix A)

7. Only a minority of whites in all groups believe that opponents of desegregation would resort to mob violence in trying to stop it. A larger proportion, but still a minority, believe that serious violence would result if desegregation were attempted in their community in the next few years. (Table 5, page 140, Appendix A)

8. A yet smaller minority of both of the Negro groups anticipate mob violence or serious violence as a result of steps towards desegregation. (Table 5, page 140, Appendix A)

9. The majority of all white groups are not sure that peace officers could cope with serious violence if it did occur in their communities, replying either "no" or "don't know" to the question. (Table 6, page 141, Appendix A)

10. A much smaller proportion of both Negro groups expresses doubt as to the ability of law enforcement officials to deal with serious violence. (Table 6, page 141, Appendix A)

11. The majority of most of the white groups believe that peace officers could maintain law and order if minor violence occurred. (Table 7, Appendix A)

12. The Negro groups did not differ greatly from the white groups in the proportion believing that police could cope with minor violence. (Table 7, Appendix A)

13. Only 13.24 per cent of 1669 peace officers believe that most of the peace officers they know would enforce attendance laws for mixed schools.

14. A majority of the members of all white groups except peace officers, (who were not asked): radio station managers; and ministers, believe that most of the people of Florida and most of the white people in their communities disagree with the Court's decision. (Table 8, Appendix A)

15. In the five white groups asked, from one-fourth to one-half of the respondents believed that most of the Negroes in their community were opposed to the desegregation ruling. (Table 8, Appendix A)

16. A much smaller proportion of both Negro groups believe that most of the people of Florida, most of the whites in their community, and particularly the Negroes in their communities are in disagreement with the principle of desegregation. (Table 8, Appendix A)

17. Only a small minority of all groups, white and Negro believe that immediate assignment of children to schools on the basis of geographical location rather than race would be the most effective way of ending public school segregation. (Table 9, Appendix A)

18. All groups think a gradual program of desegregation would be most effective. Negroes, however, prefer that the process start within the next year or two with immediate, limited integration much more frequently than do whites. The whites prefer a very gradual transition with no specified time for action to begin. (Table 9, Appendix A)

19. Whites who expressed an opinion believe that the primary grades and the colleges are the levels on which desegregation could be initiated most easily. On the other hand, almost as many Negroes believed that segregation should be ended on most or all grade levels simultaneously as believed it should be ended first at the lowest and highest grade levels.

20. The maintenance of discipline in mixed classes by Negro teachers is regarded as a potential problem by a

majority of white principals, supervisors and PTA leaders. A much smaller proportion of Negroes regarded this as a problem, with a majority of Negro principals believing that colored teachers could maintain discipline in mixed classes. (Table 11, Appendix A)

21. A majority of all white groups believe that white people would resist desegregation by withdrawing their children from the public schools, but a much smaller proportion of Negroes, less than a majority believe that this would happen. (Table 11, Appendix A)

22. Almost two-thirds of white school officials—superintendents, board members, and trustees—believe that application of Negroes to teach in mixed schools would be rejected. (Table 11, Appendix A)

It should be noted at this point that this opinion is supported by the experience of other states where desegregation of schools has already taken place. The August 27, 1954, issue of U. S. News and World Report, page 35, states, "In the north, protests from white parents tend to drive Negro teachers out of the schools to which their children go. The same thing is expected in the South when desegregation comes to the schools there. An illustration of what happens in the North is shown by the experience of Jeffersonville, Indiana. The town lies in the southern part of the State, just across the Ohio River from Kentucky. A great deal of Southern tradition and many Southern customs have reached across the river. Jeffersonville is just completing desegregation of its schools. There have been few unhappy incidents. But there has been a greater problem with teachers than with children in the schools. There were 16 Negro teachers in Jeffersonville when desegregation was started in 1948. By 1951 their number had dwindled to 11 as school enrollments were consolidated. For the school year starting in autumn, 1951, only three Negro teachers were retained. They had achieved permanent tenure under State law, and could be discharged only for cause."

Florida now employs 19,848 persons in instructional positions not including supervisors. 4,721 of these teachers are Negroes. (Biennial Report, Superintendent of Public Instruction, State of Florida, 1950-51)

23. Nearly three-fourths of school officials believe that it would be difficult to get white teachers for mixed schools. (Table 11, Appendix A)

24. Almost half of school officials and a little over 40% of white PTA leaders believe that the people of their communities would not support taxes for desegregated schools, but only about 20% of Negro PTA leaders believe that such support would not be forthcoming. (Table 11, Appendix A)

25. In the case of all potential problems on which both Negroes and whites were questioned a smaller proportion of Negroes than of whites indicate belief that problems would arise as a result of desegregation. (Table 11, Appendix A)

26. In the case of peace officers there is a positive relationship between personal disagreement with the decision and lack of confidence in the ability of peace officers to cope with serious violence. There is an even higher positive relationship between belief that segregation should be kept and belief that peace officers would not enforce school attendance laws for mixed schools. (Table 12, Appendix A)

Regional Variations. The responses to certain items of the two largest groups polled, the peace officers and the white school principals and supervisors, were analyzed by region of the state in which the respondents lived. The 67 counties of Florida were grouped into 8 regions defined by social scientists at the Florida State University in "Florida Facts" (Tallahassee, Florida; School of Public Administration, The Florida State University).

Clear-cut regional variations in attitudes and opinions are found to exist, as is indicated by the following findings;

ditions in the South insist upon rushing matters, there is certain to be harmful friction

"The level-headed view such as that expressed by Senator Holland must prevail."

The Tampa Morning Tribune in an editorial August 26, 1954, said:

"In the brief which he is preparing to submit to the Supreme Court by October 1, Attorney General Ervin asks the court to go slow in ordering actual compliance with its edict of May 17 outlawing segregation. Mr. Ervin said:

'My purpose in filing the brief is to try to show the court that Florida, from practical considerations, is not ready for desegregation immediately, but that if it must come eventually, it should come only after a reasonable period of time and then only on a county to county or local basis pursuant to administrative determinations made by local school authorities. It is entirely possible that if the court will authorize this course many of the situations will not be too difficult to solve, given time to work them out.'

"That, in our view, is sound sense and should appeal to the judgment of the high court. It is apparent that a change in the existing order can be effected only through careful and patient effort, on a local basis. Also it may prove necessary to have action by the Florida Legislature to properly implement the change. The essential issue is the dividing line between federal and state authority."

The St. Petersburg Times of August 27, 1954, reported a speech by County School Superintendent Floyd Christian of Pinellas County to a meeting of Negro school teachers, as follows:

"Pinellas County Negro teachers were urged as leaders of the community 'to work patiently, calmly and sensibly' on the segregation problem so that all can con-

27. Although the majority of peace officers in all regions feel that segregation should be kept, the percentage feeling so varies from 83% in two regions to 100% in one region. (Table 14, Appendix A)

28. The percentage of white principals and supervisors who are in disagreement with the decision varies from 20% to 60% in different regions. (Table 15, Appendix A)

29. A large majority of white principals and supervisors in all regions indicate that they would comply with the decision regardless of personal feelings, but the percentage varies from 76% in Region VII to approximately 94% in Regions VI and VIII. (Table 16, Appendix A)

30. The percentage of peace officers predicting mob violence as a method of resisting desegregation varies from 20% in Region VIII to nearly 63% in Region VII (Table 17, Appendix A).

31. Percentages of both peace officers and white principals and supervisors predicting serious violence in the event desegregation is attempted vary widely between some regions (Table 18, Appendix A).

32. The majority of both peace officers and white principals and supervisors in all regions doubt that the police could maintain law and order if serious violence occurred, but there are some regional variations. (Table 19, Appendix A)

A Note on Responses of Legislators. Although the 79 members of the state legislature and legislative nominees who returned questionnaires constitute almost 45 per cent of the 176 legislators to whom the forms were sent, generalizations as to the entire membership of the legislature on the basis of their responses are entirely unwarranted. Any attempt to predict the action of the legislature at its next session would be even more presumptuous. The responses of these legislators to two special questions asked of them are presented below as a matter of interest, however.

tinue working together for the growth of the community...

"We live under the law and must follow the law. Rioting, hatred and action would wreck our school system and is not the answer. Florida must never try to abolish public education. Turning the schools into private institutions is certainly not the answer. Any such action would prove disastrous to the quality of education and in the end would be judged by the Supreme Court as being an effort to circumvent the provisions of the Constitution of the United States.

"What I am saying is in my opinion Florida should not try to circumvent the law. Any such action would encourage an attitude of general disregard for law and in the long run will only increase the difficulties without contributing anything toward the solution of the problem...

"There is another reason why this problem will have to be approached with education and understanding. I don't believe that here in the South, where you have had separate schools for nearly a hundred years, that an immediate court decision to stop it and integrate the students can be done successfully. I don't believe you can legislate the people into doing this, they will have to be led by a systematic plan of education and this, of course, will take time."

The Ft. Myers News-Press in an editorial August 28, 1954, said:

"A number of Fort Myers citizens have received by mail this week circular letters purporting to come from the Ku Klux Klan which attempt to fan the flames of racial intolerance over the school segregation issue and make a bid for Klan recruits.

"The letters enclose an application blank for membership in the Klan returnable to an Orlando post office box. Whether they represent a bona fide recruiting drive by the Klan or just an effort of some crackpot or promoter trying to cash in on the current anxiety over prospective desegregation in the schools, the re-

The legislators were asked to indicate which of five possible courses of action should be followed at the next session of the legislature. The percentage checking each course, and the details of the five courses of action, are shown in Table 20.

The legislators were also asked whether they believed that there is any legal way to continue segregation in Florida schools indefinitely. Of the 79 respondents, 34.20 per cent replied "Yes," 25.31 per cent replied "No," and 39.32 per cent answered "Don't Know," or gave no answer.

III. THE DADE COUNTY REPORT

A separate intensive study was made by the Attorney General's Advisory Committee under the immediate supervision and direction of a research team from the Department of Government of the University of Miami. This study was made of the greater Miami area and some outlying sections in neighboring counties in the belief that this part of Florida might have different problems of integration from other parts of the state due to its geographic location and density of population. The results of this study are included as a part of the overall project and set out in Appendix A.

IV. DISCUSSION

The implications found in the Florida survey are many and varied but it is significant that to a remarkable extent they verify and coincide with the conclusions and observations set forth in the book by Mr. Harry S. Ashmore, "The Negro and the Schools". The book is the result of an exhaustive research study sponsored by the Ford Foundation for the Advancement of Education of the problem of segregation in the south as the title implies.

For example, Mr. Ashmore states (page 81, "The Negro and the Schools):

> "The most important factor in integration of the public schools in the non-South, finally, is community attitudes. *It is axiomatic that separate schools can be merged only with great difficulty, if at all, when a great majority of the citizens who support them are actively opposed to the move.* (Italics supplied) No other public activity is so closely identified with local mores. Interest in the schools is universal, and it is an interest that directly involves not only the tax-payer but his family, and therefore his emotions. Those who are indifferent to all other community affairs tend to take a proprietary interest in the schools their children attend, or will attend, or have attended. State influence in public education has grown in recent years in proportion to the increase in state aid, but state policies rarely are so important as local forces in the shaping of public educational policies and practices. . . .
>
> "The most meticulous house-to-house poll in any American community with a sizeable Negro population would doubtless turn up a negative response to a proposal to integrate the separate public schools. In the case of the whites this might reflect deep-seated race prejudice, or it might be no more than the normal, instinctive resistance to any marked change in the accustomed patterns of everyday living. In many cases the basis of objection might be the demonstrable fact that the great majority of American Negroes are still slum-dwellers; many a parent who proudly considers himself wholly tolerant in racial matters will object to having his child associate with classmates of inferior economic and social background. It is probable that some resistance to integration would even be recorded among Negroes, who might respond negatively out of simple fear of the unknown, or the desire to protect their children against possible overt discrimination by white classmates or teachers. The great problem for schoolmen who have been moved to consider integration by their own convictions, or by the prodding of higher authority, has been to determine whether the passive

resistance which they can readily sense will be translated into active resistance once the issue is drawn.

"In any event the superintendent who is called to take his school system from segregation to integration must be prepared to function as a '*social engineer*' (Italics supplied). He will deal on a mass scale with delicate problems of human relationships involving not only pupils and teachers but the community at large.

"These case studies demonstrate that wherever there has been an active and well-planned program to 'sell' integration to the community at large it has succeeded —but here again there is no way to measure just how difficult the selling job really was. The most notable examples are to be found in New Jersey, where a well-staffed state agency made it its business to work closely with those communities which had long practiced segregation and appeared resistant to the change required by the new constitution. Although New Jersey's Division Against Discrimination was armed with the power to withhold state funds and even to bring misdemeanor charges against school officials who refused to comply, it accomplished the integration of 40 formerly segregated school districts without invoking these powers in a single instance...

"At the other end of the scale is Cairo, Illinois, where the effort of the NAACP to force a reluctant school board to accept the state ban on segregation led to violence. Cairo in almost every aspect of its community life, may be classified as a 'sick city,' and there is no indication of anything approximating an orderly interracial approach to the problem either before or after integration became an explosive issue.

"Between these two extremes lie most of the non-Southern cities. They are, for the most part, beyond the reach of any possible decision of the Supreme Court in the test cases, for segregation in the schools of the non-South is now rarely bolstered by law, and where it is it would hardly miss the legal prop if it were struck down. Desegregation is proceeding there at a rate determined by the willingness of individual communi-

ties to accept the change—or by the willingness of community leaders to put the issue to the test."

The same recognition of the problems involved in desegregation and the obvious need for adequate time to give local school administrators an opportunity to devise plans and means of overcoming the problems is found in the thinking of almost all authorities who have made a study of the subject.

In discussing the Problems of Desegregation, Dr. Truman M. Pierce, Professor of Education, George Peabody College for Teachers, and Director of the Cooperative Program in Educational Administration (Southern Region) had this to say (see page 91 Journal of Public Law, Emory University Law School, Vol. 3, Spring 1954, Number 1).

"People respond well, in general, to the opportunity of discussing with each other mutual concerns and interests. Controversial subjects discussed in the public arena under skillful leadership can often be resolved with a minimum of conflict. Effective public forums on the community level provide experiences in self-government which can hardly be surpassed in satisfactions which they bring and in progress they stimulate. However, questions tinged with a high degree of emotionalism offer ready-made opportunities for rabble rousers and self-seekers to do serious harm. Consequently, the calm, sane and relatively objective approach, which can be expected from most of the substantial citizens of the average community, is essential in the types of discussion suggested. It is hardly necessary to point out that such public forums should avoid emotional binges and concentrate on the study of facts. The third principle is that responsible and public spirited citizens of both races should discuss together the facts concerning their school system and together make plans for its improvement. This does not imply that the board of education should be by-passed, for final policy must be determined by this legally constituted body.

"Ill-advised and hasty action, determined without benefit of a period in which calm deliberation takes place (Italics supplied) can do more harm than good. Urgency need never take precedence over wisdom. Piecemeal and stopgap policies are likely to prove unsound and wasteful in the long run. Therefore, the final principle which is suggested is that extensive policy setting based on thorough study and careful thought should provide the framework for a thorough and comprehensive program of work extending as far into the future as is practical."

Dr. Howard W. Odum,[1] in discussing "An approach to diagnosis and direction of the problem of Negro segregation in the public schools of the South" says (Journal of Public Law, Emory University Law School, Vol. 3, Spring 1954, No. 1, page 34):

"Final assumptions must rest upon continuing exploration, education, testing grounds for federal and state programs, and for a working balance between voluntaristic and coercive action. For, from special studies, general observations, and recorded experiences, it must be clear that all our exhibits of evidence appear as a sort of tug of war, now moving this way, now that. The real definition of the situation comes back again and again to inferences about issues, cultural values that are characteristic of the region, and to exploration and survey, projection of trends and predictions, and potentials that can be identified with alternatives. In this dilemma it would seem that never have the old classical, 'On the one hand and on the other,' and 'but also,' appeared to carry such a multitude of dichotomies, paired contradictions, major premises assumed, 'ands,' 'ors,' and 'buts,' in the loom of interaction processes. And rarely ever have we run across so many generalizations based upon so little basic research or tested observations. All of this is

1. Professor of Sociology, University of North Carolina; past president of the American Sociological Society; editor, Social Forces; author, American Sociology (1951) and other books.

relevant not only to the elemental cataloguing of facts and the appraisal of causal factors, but to the orientation of value judgments and strategy priorities."

Everyone concerned in the State of Florida with the problems inherent in any attempt to desegregate schools, whether he be a member of the legislature or a school official cannot help but be aware that any change which is undertaken from the status quo must be made with at least the passive approval of the people in the community who will be affected by the change. Mr. Ashmore (The Negro and the Schools, page 135) states:

"Finally, there is the hard fact that integration in a meaningful sense cannot be achieved by the mere physical presence of children of two races in a single classroom. No public school is isolated from the community that supports it, and if the very composition of its classes is subject to deep-seated and sustained public disapproval, it is hardly likely to foster the spirit of united effort essential to learning. Even those who are dedicated to the proposition that the common good demands the end of segregation in education cannot be unaware that if the transition produces martyrs they will be the young children who must bear the brunt of spiritual conflict."

schools in the process and that these officials be accorded the discretion to make the transition successfully and *effectively* in good time and good order.

Even though it has been held the Negro child should not be discriminated against in his public education nor unduly postponed in his enjoyment of it, surely that right is not so absolute, so compelling in its nature, that reasonable administrative procedures necessary for the public welfare cannot be asserted during the transition period. If there ever was a condition which needs elasticity in the application of constitutional guaranties to meet it, certainly it is the transition period from the segregated school system to the non-segregated school system in the various schools of the South.

By a concurrent application of prudent and sensible administrative and judicial techniques the problem may eventually be solved. But the Court should always allow the states involved and their officials, both state and local, the opportunity to first work out the problem and accord to their determinations a wide degree of discretion and latitude in the integration. The Court has said in *Minersville School District v. Gobitis,* 310 U. S. 586, 60 S. Ct. 1010, 84 L. Ed. 1375, (1940), it would not make itself the school board of the country. That does not mean the Court, beginning with the court of first instance, would not always reserve the judicial authority to review and probe. It would exercise this authority where in proper cases duly brought it was alleged the county school board had not made the requisite effort in good faith to desegregate in line with appropriate criteria or factors which we believe the Court will outline in its implementation decision. Parenthetically and most earnestly, we urge the Court to accept the factors we have outlined, believing them to be essential to successful implementation in the light of problems involved.

D. Intangibles In Education

This Court has recognized the validity and significance of certain intangibles in education. Quoting from the Brown decision it said "In Sweatt v. Painter, supra, in finding that a segregated law school for Negroes could not provide them equal educational opportunities, this Court relied in large part on 'those qualities which are incapable of objective measurement but which make for greatness in a law school'.

"In McLaurin v. Oklahoma State Regents, supra, the Court, in requiring that a Negro admitted to a white graduate school be treated like all other students, again resorted to intangible considerations: ' . . . his ability to study, to engage in discussions and exchange views with other students, and, in general, to learn his profession.'

"Such considerations apply with added force to children in grade and high schools. To separate them from others of similar age and qualifications solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone."

The legislature of Florida was motivated by the same consideration of "intangibles" in education when it enacted Section 242.46, Florida Statutes. This law prohibits secret societies including fraternities and sororities in the public schools. The legislature and school officials recognized that in some instances fraternities generated feelings

Part Two

Specific Suggestions to the Court in Formulating a Decree

of snobbishness on the part of the members and feelings of inferiority on the part of those not invited to join. It was considered that these feelings might in the words of the court "affect their hearts and minds in a way unlikely ever to be undone."

We believe that this Court should recognize the validity and significance in education of other "intangible considerations" which may result from a precipitate attempt to compel desegregated schools in all areas of Florida. It is obvious that children reflect in their attitudes much of the same deep-seated prejudices and antagonisms felt by their parents. In the many areas of Florida where these feelings are known to exist no school administrator could compel an immediate desegregation without the certain knowledge that he was placing the children in a situation which could only result in generating feelings of hatred, inferiority and bias which would "affect their hearts and minds in a way unlikely ever to be undone."

E. Reason for Hope

There is some reason to believe that segregated schools can be ended in Florida in an equitable manner without destroying the school system itself. But there is no reason to believe that this can be accomplished hurriedly or through the legal coercion of school officials who would thus find themselves caught in the impossible dilemma of confronting on the one hand the irresistible force of a judicial edict which must be obeyed and on the other hand the immovable object of public opinion which cannot be altered. The only hope for a solution is for this Court to restrain the use of coercive measures where necessary until the hard core of public opinion has softened to the extent that there can be at least some measure of acceptance on the part of a majority of the people.

This recognition of the need for time and tact and wisdom in bringing about a true realization of the goal set by this Court, is shared by leaders of both the white and Negro races in Florida.

Dr. Mary McLeod Bethune, founder of Bethune-Cookman College at Daytona Beach, Florida, and a recognized leader of the Negro people throughout the nation for many years, stated in a press release soon after the announcement of this Court's decree in the Brown case:

> "... The High Tribunal has put a legal foundation under a belief many of us have long held and which is clearly and concisely stated in the most basic American ideal, 'All men are created equal.'

"In quietness and patience, people of culture receive this news, realizing the inevitable has at last come about. They also realize, however, that the absorption into our daily life of this new decision—the putting of it into practice—must represent an organic cultural assimilation which, like all social processes, will take time. But eventually the wrongs and mistakes of history are righted and remedied and inhumanities are rectified. . . . . Let us enter into this integration calmly, with good judgment. Let us give and take, working out together the best possible means we can put into action so that there may be peace and understanding, and, may I say, the spirit of brotherhood.

"There is much for the Negro to do as well as the white. We must use tact and wisdom. It will take conferences, thinking and planning and working side by side. More largely than is realized, we are good, loyal, American citizens. And whether we be north, east, south or west, we shall put forth every effort to meet the requirements of our new status."

There is reason to believe that given the opportunity for voluntary local action and sufficient time an effort will be made on the part of educational leaders of both races in Florida to work together to achieve the goal set by the Court.

United States Senator Spessard L. Holland of Florida, speaking of desegregation, said in a press interview (Tampa Tribune, August 28, 1954, page 1):

"We cannot spend all our time in vain regrets, but rather time must be spent in trying, as apparently the State Cabinet has been doing along with officials and educators of both races at the local level, to learn how to bring it about."

On July 15 and 16, 1954, the Continuing Educational Council of Florida met in Tallahassee to consider the problem of desegregation. This Council is composed of representatives from virtually all civic, labor, veteran and edu-

cational organizations in the state. Seventy members of the Council were present at the Tallahassee meeting and the future course of Florida schools in the light of the Court's decision in the Brown case was discussed for two days. At the end of its deliberations the Council adopted the following motion:

> "Based on information and reports at this time, the Council joins with the request of the State Cabinet, heretofore made, whereby the Attorney General of Florida take every step necessary to prepare and file a brief which Florida and several other states have been invited to submit when consideration is given this October to the 'when' and 'how' provisions of the Court's judgment in the recent decision holding segregation unconstitutional. It now appears that this brief should emphasize among other things the following: 1. The maximum time possible should be granted the states affected. 2. Compliance with regard to time should be on a local basis; the time requirement because of mores and conditions will vary within counties of each state. 3. Enforcement provisions of the judgment's requirements should be left to the Courts of first instance."

Additional agreements which were reached by a large majority of the Council in discussion of the Supreme Court decision on segregation were as follows:

1. "The public school system of Florida should be maintained and improved. Nothing should be done which will destroy these schools or cause them to retrogress in any way."

2. "The citizens of Florida will wish to abide by the laws of our nation, but time for necessary adjustments is essential if serious problems are to be avoided."

3. "The problems of adjustment are different in each county and in various communities within each county. Responsibility for solution of these problems rests with the citizens and authorities within these local areas."

4. "A committee from the Continuing Educational Council, with outside representation as well, is to be appointed. Its function is to suggest multiple plans by which desegregation may be implemented. Among the ideas developed would be the suggestion that local groups of white and Negro citizens make careful appraisal of existing conditions with the idea of proceeding gradually and in an orderly manner toward compliance with our National Constitution."

5. "A committee of nine representatives from the Continuing Educational Council is to meet with a representative group of State Negro leaders for the purpose of developing a joint statement to serve as a guide to both races in working out the problems ahead."

On July 30th, 1954, fifty representative Florida Negro leaders met at Edward Waters College in Jacksonville to study the problem of integration of Florida schools. As a result of this meeting a committee of nine was selected to meet with a similar committee of the Continuing Educational Council of Florida for the purpose of studying ways and means of implementing the Supreme Court's decision in Florida.

On September 10, 1954, a committee representing the Continuing Educational Council, and a committee representing the Leadership Conference, a recently convened meeting of Negro leaders, met in Tallahassee to consider jointly some of the problems posed by the recent Supreme Court decision that segregation in the public schools is unconstitutional.

After lengthy consideration and frank discussions of the various viewpoints of both whites and Negroes, the joint committees agreed upon the following motion:

"1. THAT, in a democratic society, public education is of paramount importance;

THAT the State of Florida has made significant gains

(3) That admission to said school was denied by the local school authorities and that all other administrative remedies such as appeal to the State Board of Education (where provided by law) have been exhausted.

B. It is suggested that the court of first instance conduct hearings, take testimony, determine the merits of the petition and the answer thereto and the equitable reasons which may exist which would justify the school authorities in refusing to approve the petitioner's application for admission to the school in question. In conducting such proceedings, the court should consider:

(1) Evidence as to whether the state school authorities and legislature have had a reasonable amount of time to reorganize the legal provisions of the state school structure to comply with the Brown decision.

(2) Evidence of good faith on the part of the school authorities in seeking to comply with the Brown decision and integrate the public schools. Such evidence should include:

(a) Efforts previously made and in progress to overcome practical, administrative problems encountered in integrating schools as proclaimed by this Court.

(b) Efforts previously made and in progress to promote citizens' educational committees and interracial committees for the purpose of improving racial relations in the community and avoiding racial antagonisms in the schools.

(3) Evidence and recommendations submitted by interracial citizens' committees which may be organized pursuant to law for the purpose of assisting the local school authorities, or evidence and recommendations submitted by impartial survey and fact-finding teams which may be created by the State Board of Education pursuant to its administrative powers.

(4) Evidence of existing administrative problems

in recent years in the quality of its educational program and in the educational opportunities for all the youth of the State;

THAT the State of Florida cannot afford the educational or economic loss which would occur if we permitted a disruption of this program;

THEREFORE, we believe that we must maintain and support a strong system of public education for all the youths of the State and that the citizens of Florida in their local contacts, through constant education and study, should work for the general education of all the people as prescribed by the laws of our State and Nation.

2. THAT we endorse the filing of the proposed brief by the Attorney General for the purpose of preserving the system of public education in the State of Florida when a final interpretation has been rendered by the Supreme Court.

3. THAT we urge this Committee to continue to work on the processes necessary for ultimate compliance with the law;

THAT we encourage the organization of similar groups at the local level, i.e., school community by school community, to work toward the same objectives."

The motion was approved unanimously.

The Lakeland Ledger in an editorial August 29, 1954 said:

"In his annual speech to his home folk in Bartow on Friday, Senator Holland took occasion to talk about abolition of segregation in public schools . . .

"That attitude is the only one with which the problem now at hand can be solved, and it is the attitude of all clear thinking citizens in the South.

"If the process is not rushed, there will be a good chance of making the adjustment harmoniously over a period of years.

"If forces in the North that are unfamiliar with con-

of integration which have not as yet been solved and which would jeopardize the efficient operation of the school system if the petitioner's application for admission was granted immediately.

(5) Evidence of such a strong degree of sincere opposition and sustained hostility on the part of the public to the granting of the petitioner's application, as to give the school authorities reasonable grounds to believe that immediate approval of the petitioner's application would cause a disruption of the school system or create emotional responses among the children which would seriously interfere with their education. Such evidence should be carefully analyzed by the court to determine its validity and all evidence of this nature which might appear to be simulated or fabricated for the purpose of continuing segregated schools in the community should be rejected.

(6) Evidence that the petitioner's application was made in good faith and not for capricious reasons. Such evidence should demonstrate:

(a) That the petitioner personally feels that he would be handicapped in his education, either because of lack of school plant facilities or psychological or sociological reasons if his application for admission is denied.

(b) That the petitioner is not motivated in his application solely by a desire for the advancement of a racial group on economic, social or political grounds, as distinguished from his personal legal right to equality in public school education as guaranteed by the 14th Amendment. This distinction should be carefully drawn. This Court has ruled that segregated schools are forbidden by the 14th Amendment because they may deprive the Negro of an equal opportunity in acquiring an education. During the process of desegregating schools it should always be kept in mind that the sole legal purpose of public schools is to educate. The public school system has never been permitted under Florida law to extend its activities into the

cipients have no way of knowing, although Orlando always has been a hotbed of Ku Kluxism and the application blank probably is genuine.

"There is nothing doubtful, however, about the hate literature enclosed with the KKK circulars. The fat envelopes—so bulky that most recipients had to pay an extra three cents postage due—were crammed with highly inflammatory articles against the Negro race and slanders against various public officials and individuals fit only for the sewer. In the delicate situation which now confronts both whites and Negroes arising from the Supreme Court anti-segregation ruling—a situation that calls for all the calmness and clear thinking that can be mustered—outpourings such as this are not only unhelpful but dangerous."

The Orlando Sentinel in an editorial August 19, 1954, said:

"As a result of a survey recently completed by an interracial committee appointed by the attorney general, it has been made perfectly clear that even in Florida many people of both groups are not ready to send their children to the same school together, and that law enforcement agencies are not prepared to enforce such laws or to prevent the violence which would arise under such circumstances.

"The problem varies from community to community just as it does from state to state and the difficulty increases in direct ratio to the number of Negroes present. It would be a relatively simple matter to enforce desegregation in a community where there would be only one or two Negroes in a classroom, as would be the case in most northern cities. It is not so simple where the numbers of the two races are more nearly equal.

"This happens to be the case in many of our smaller north and west Florida towns, as well as in most of the rural areas of South Carolina, Georgia, Alabama and Mississippi. In some Florida cities, however, particularly in South Florida, there are relatively few Negroes and the opposition to their admittance to white schools is not so prevalent.

"Clearly it would be unfair to expect public officials to overcome the problems of integration all at the same time without regard to the difficulties involved. The Supreme Court should take cognizance of the inherent differences among individuals as among communities and leave the problem of when desegregation can safely be accomplished to local authorities."

The Miami Herald in an editorial of May 24, 1954, said:

"Anticipating that the United States Supreme court might end segregation in the schools, as it did last week, Florida leaders have been quietly taking stock of the state's educational resources.

"They recognized that the change, when it came, would be the most momentous since the War Between the States, and no family would escape its effects.

"What this study showed was that Florida has made more progress in Negro education, probably, than any other state with segregation, and is in a better position to meet the challenge of the court ruling."

These meetings and examples of editorial opinion may appear insignificant but when considered in relation to the fact that they took place in a State which still has three counties where no Negroes have registered to vote (see page 178, Appendix A), and whose peace officers are overwhelmingly opposed to desegregation in any form (see Table 3, page 138, Appendix A), they should not be ignored. *We believe that any attempt to compel an immediate desegregation in Florida schools would constitute a shock treatment so drastic that any further efforts on the part of these and similar groups would be promptly nullified.* Such efforts on the part of citizens' committees of both races can only take place as voluntary manifestations of good citizenship. They cannot take place in an atmosphere of fear and coercion.

F. Regional Variations

One of the most important factors which has emerged from our study of the segregation problem in Florida is the clear indication of marked regional variations in the intensity of the feelings of the people.

The State of Florida is unlike other Southern states in one significant respect. Geographically it is large and sprawled out over an area of a thousand miles extending from Pensacola in West Florida to Key West on the southernmost tip.

Between these two extremes can be found startling differences in the social customs and traditions of the people inhabiting the various counties.

Generally speaking, the influx of people from northern states has tended to settle in South Florida and this has altered to some extent the social pattern of South Florida counties, whereas North and West Florida counties have remained to a large extent populated by people of Florida or Southern ancestry who cling to Southern traditions and customs.

It must be emphasized, however, that this type of generalization is apt to be misleading because counties and communities may be found in South Florida where the degree of racial differences in feeling may be even more pronounced than in the northern part of the state.

These variations indicate that there may be communities

sixty days, was granted in which to work out a plan for dissolving a combination found to control the tobacco industry in violation of the Anti-Trust Act of July 2, 1890 *(26 State at L. 209, Ch. 647, USC Title 15, s1)*, and creating out of the elements composing it a condition which would not be repugnant to the prohibitions of the Act.

II. *In Standard Oil Co. v. U. S., 221 U.S. 1, 31 S. Ct. 502, 55 L. Ed. 619 (1910)*, the Court again recognized the need for *time* in putting into effect its decision. In this case Chief Justice White stated that the magnitude of the interests involved and their complexity required that six months be given in which to execute a decree for the dissolution of a holding company controlling the oil industry in violation of the Anti-Trust Act of July 2, 1890, and for the transfer back to the stockholders of the subsidiary corporations of the stock which had been turned over to the holding company in exchange for its own stock.

In the area of nuisance litigation, the Supreme Court has often recognized the need for a period of gradual transition in order to effectuate decisions. In the Case of *New Jersey v. New York, 283 U. S. 473, 75 L. Ed. 1176, 51 S. Ct. 519, (1931)*, the State of New Jersey sued New York City in the United States Supreme Court for an injunction restricting the dumping of New York City's garbage into the ocean off the New Jersey coast. Injunction was granted in the opinion by Butler, J., affirming a special master's report. A decree was entered, declaring that the plaintiff State of New Jersey was entitled to an injunction as sought in the complaint; *but that before* (italics supplied) an injunction was issued, a *reasonable time would be accorded* to the defendant, within which to carry into effect its proposed plan for the erection and operation of incinerators to destroy the waste materials which were being dumped off the New Jersey coast, or to provide other means to be approved by the decree for the disposal of such materials.

in Florida where conditions are such that local school officials would feel justified in proceeding within a relatively short time to integrate the white and Negro schools. On the other hand, there are many counties, notably those having a large Negro population, where it is apparent that any attempt to bring about immediate desegregation would result in violence and bring the school system to a complete standstill.

These variations in community attitudes and conditions preclude the practicability of any overall, statewide detailed plan, time schedule or target date for desegregation which might be evolved. We believe that whatever plan and time schedule is adopted in each community must, if it is to be workable, have been produced through the efforts of the local school officials who understand the specific problems involved and who must be willing to undertake to make the plan work. We do not believe that the courts should undertake to perform the functions of local school boards and we do not believe that this Court should insist on a plan of action which, in its efforts to guard the rights of some, must necessarily forsake the rights of all others.

G. Discussion

In suggesting an affirmative answer to question 4B, we have attempted to take into consideration the wide range and complexity of the problem. We know that from its common-sense practical aspects a successful implementation requires the blending of the best administrative and judicial techniques over a reasonable period of time which will vary in each school district or county, dependent upon the circumstances. Admitted that segregation has been held unconstitutional as a class discrimination, that does not mean that transition to the actuality of non-segregated education can be accomplished immediately or without planning and preparation and administrative actions.

The public welfare of the segregated states is involved in the transition along with administrative details. It would be unwise not to permit the exercise of reasonable regulations under the police power during the transitional period in the interest of peace in the community and good order and safety in the schools. The white people of the segregated states have too long relied upon the doctrines expressed in *Plessy v. Ferguson, 163 U. S. 537, 16 S. Ct. 1138, 41 L. Ed. 256 (1896)* to be expected to accept complacently the new order. Our survey amply bears this out.

Therefore, we most earnestly and sincerely urge the Court to permit that degree of latitude necessary to the segregated states and the county school boards therein to bring about an effective gradual adjustment to integration so as to soften and ameliorate the transition and preserve peace and order in the communities and the

Reasonable time was a question of fact to be decided upon by the same special master, after hearing and evaluating all witnesses' testimonies from each party or witnesses which the master may select to be heard. The master was then to report to the court his findings and a form of decree. On a rehearing of the case on *December 7, 1931, (284 U. S. 585, 75 L. Ed. 506, 52 S. Ct. 120)* a decree was entered by the Supreme Court prohibiting any further dumping of refuse, etc., into the ocean off the coast of New Jersey. Said decree was to become effective on and after *June 1, 1933,* and progress reports were to be filed with the clerk of the Supreme Court on April 1 and October 1 of each year beginning April 1, 1932, setting forth the progress made in the construction of incinerator plants, etc., for the final disposition of garbage and refuse, and also the amount of material dumped at sea during the periods covered by such reports.

Provision was also made in the decree that upon the receipt of said reports, and on due notice to the other party, either party to the suit could apply to the Court for such action or relief with respect to the *time* allowed for the construction, or method of operation of the proposed incinerator plants, or other means of final disposition of garbage, etc., as may be deemed appropriate. In other words, the flexibility of the decree permitted frequent re-evaluation to promote the greatest justice to all parties.

On May 29, 1933 *(289 U. S. 712)* Mr. Chief Justice Hughes announced a new order, based on the failure of New York City to comply with the decree of December 7, 1931. The defendant asked that the time for taking effect of the injunction be extended from June 1, 1933 to April 1, 1934. It was ordered that these applications be heard on November 6, 1933, that E. K. Cambell be appointed Special Master, empowered to hear witnesses, issue subpoenas, take evidence offered by interested parties, and also such as he may deem necessary to show:

(A) What shall have been done by defendant city, up to September 15, 1933, and the time reasonably required to enable it to comply with the decree.

(B) The amounts spent by the plaintiff New Jersey to prevent harm to its beaches, waters, etc., subsequent to June 1, 1933, and the damages sustained by them as a result of New York's failure to comply with the decree.

The Special Master's findings were subject to consideration, revision, or approval by the Court.

On December 9, 1935 *(296 U.S. 259, 80 L. Ed. 214, 56 S. Ct. 188)*, Mr. Justice Butler announced a new decree modifying in effect the decree of December 4, 1933. The latter decree enjoined New York City from dumping refuse off the New Jersey coast, stipulating a five thousand dollars ($5,000.00) a day penalty for failure to comply. On October 7, 1935, New York City sought a modification of the decree, and asked for a petition to have New Jersey show cause why a ruling could not be made to the effect that ten miles (10) off shore dumping is satisfactory as to non-floating material, or, in the alternative, why the Court should not modify its decree so as to permit the defendant to dump non-floating sewage as aforesaid.

Defendant's motion for leave to file was granted.

It should be noted that the original decree was handed down in 1931 and continued modification took place for some four (4) years in order to effectuate the original decree. Recognition for additional time was given each time the case reappeared before the Court.

III. The Supreme Court again recognized the need for a calm period of gradual transition to effectuate its decree, in the Gaseous Nuisance Cases in which it took some nine (9) years to implement its decrees.

The first case was that of *Georgia v. Tennessee Copper Co., 206 U.S. 230, 51 L. Ed. 1038, 27 S. Ct. 618 (1907).* In this case the State of Georgia sought to enjoin the defendant copper companies from discharging noxious gases from their works in Tennessee over the plaintiff's territory. The State alleged that such discharges were destroying entire forest, orchard, and crop lands, and that irreparable injuries were being done and threatened in five counties of Georgia. A preliminary injunction was denied, but, as there were grounds to fear that great and irreparable damage might be done, an early day was fixed for the final hearing, and the parties were given leave, if so minded, to try the cases on affidavits. Mr. Justice Holmes held that if the State of Georgia adhered to its determination, there was no alternative to issuing an injunction, *after* allowing a *reasonable* time for the defendants to complete the structures then being built, and efforts the companies were making to stop the flow of fumes and gases into Georgia. The plaintiff Georgia was permitted to submit a form of decree on the coming in of the Court in the following October.

Eight (8) years later, on May 10, 1915, the Supreme Court again heard the same case, in the *State of Georgia v. Tennessee Copper Co.* and *Ducktown Sulphur, Copper, & Iron Co., Ltd., 237 U.S. 474, 59 L. Ed. 1054, 35 S. Ct. 631 (1915).*

This case is a continuation of the earlier one, supra (1907), in regard to the nuisance of gaseous fumes harming the property within the State of Georgia. In the earlier case, hope was entertained that some practical method of subduing the noxious fumes could be devised and by *consent,* the *time* for entering a final decree was enlarged. Both companies installed purifying devices. The original defendant, Tennessee Copper and Georgia, entered into a stipulation whereby the former undertook annually to supply a fund to compensate those injured by fumes from

Introductory Note

We do not suggest delay merely for the sake of delay itself. We do suggest that sufficient time be permitted for a gradual effective adjustment to desegregated schools to take place in each community.

The period of time required will vary in each community dependent upon its administrative problems and the attitude of its people. The length of this period of transition in each instance can only be determined by the local school authorities subject to the review of the courts of first instance when called upon to consider specific suits brought because of a disagreement with the school authorities over admission policies.

We do not believe that any court should at any time attempt to peremptorily compel school officials to integrate schools in a community when it is apparent that such action will create hostility and resentment to such a degree that the schools cannot be operated in an orderly manner.

We believe that any attempt to establish an overall specific plan for desegregation by the United States Supreme Court as a result of recommendations of a special master would be totally unrealistic and would in effect place this Court in the position of attempting to function as the county school board of the counties affected.

We believe that the courts of first instance should also avoid any attempt to exercise administrative powers normally delegated to school officials. They should not be

required to spell out in specific detail the means by which they would require a school district to comply with the new requirements of the law. Rather, let them leave to responsible local school authorities the task of drafting plans for transition, and then apply to each such plan presented in the course of litigation the test of good faith.

Widespread white hostility to immediate, enforced integration of the public schools is a fact of life in Florida, and is just as real a factor in considering the future of public education as school finance, school construction or any other.

We ask only this; that school officials not be deprived of the right to recognize local factors related to the welfare of public schools and to exercise the same discretion in dealing with the feelings of the people regarding segregation that they would exercise in dealing with any other local condition or problem that directly affected the proper operation of the public schools.

We urge, therefore, that the Supreme Court remand these cases to the courts of first instance—in all but one of these cases federal district courts—and that it vest in the courts of first instance broad discretionary powers to determine as findings of fact (1) what should be a reasonable time for transition in any given case, and (2) whether or not specific plans for compliance with the Court's general directive prepared by responsible local school officials measure up to the broad test of good faith.

We offer the following specific suggestions for the consideration of the Court in the formulation of its decree:

Specific Suggestions

I. It is suggested that the United States Supreme Court in its implementation decision or decree adopt the procedure contemplated in questions 4 (b) and 5 (d) as stated in the footnote in the Brown decision:

> "4 (b) may this Court, in the exercise of its equity powers, permit an effective gradual adjustment to be brought about from existing segregated systems to a system not based on color distinctions?"
>
> "5 (d) should this Court remand to the courts of first instance with directions to frame decrees in these cases, and if so, what general directions should the decrees of this Court include and what procedures should the courts of first instance follow in arriving at the specific terms of more detailed decrees?"

II. It is suggested that the United States Supreme Court in its implementation decision in the Brown case direct that the courts of first instance consider all suits brought to gain admittance to a specific school and claiming discrimination because of color, in accord with the following general directions:

A. The petitioner must affirmatively show;

(1) That admission to the school in question was requested by the petitioner within a reasonable time before the beginning of the school term.

(2) That the petitioner resides within the limits set by normal geographic school districting of the school he seeks to enter.

Mr. Justice Douglas was strongly opposed to the judiciary administrating industry, and favored voluntary arbitration. At page 163 he stated:

> "It would involve the judiciary in the administration of intricate and detailed rules governing priority, period of clearance, length of run, competitive areas, reasonable return and the like. The system would be apt to require as close a supervision as a continuous receivership, unless the defendants were to be entrusted with vast discretion. The judiciary is unsuited to affairs of business management; and control through the power of contempt is crude and clumsy and lacking in the flexibility necessary to make continuous and detailed supervision effective."

The implications of Mr. Justice Douglas's opposition to judicial administration of intricate and detailed rules in the economic field could readily apply to the social relationship and problems created by the recent holding in the Brown case.

II. Further evidence of the broad discretion that was permitted by the Supreme Court in administrative agencies is evidenced in the case of *Alabama Public Service Commission v. Southern Railway Company, 341 U. S. 341, 95 L. Ed. 1002, 71 S. Ct. 762, (1951).* A railroad, prohibited by state law from discontinuing trains without permission of the state public service commission was denied such permission on the ground that though the trains were being operated at a loss there was a public need for the service. Alleging that irreparable loss would result either from continued operation of the trains or from incurring the penalty imposed by state law for discontinuance without the commission's permission, the railroad sought and obtained an injunction in a federal district court against the enforcement of the statute.

The U. S. Supreme Court, through Chief Justice Vinson,

field of public welfare or related purposes. It is not the purpose or within the legal authority of the Florida public school system to provide a direct means of improving the social, political or economic status of any group or individual except as such improvement may in time result from education itself. Public schools are not intended to provide experiments in race relations or to use children as sociological guinea pigs in the solution of problems in many walks of life which adults have not been able to solve by other means.

III. It is suggested that based upon the testimony and evidence submitted, the court of first instance may either:

(A) Order that the petitioner's application for admission to the school in question be granted forthwith, if it appears that the petition was made in good faith and that there exist no reasonable grounds for delay on the part of the school board in approving the petitioner's application for admission.

(B) Dismiss the petition if it appears that it was not made in good faith and well founded in law according to the interpretation of the 14th Amendment by this court in the Brown case.

(C) Order the school authorities to hold the petitioner's application in abeyance for a reasonable period of time to allow for further adjustment to a single school system if necessary, with directions to the school authorities to proceed to overcome as soon as possible the practical or psychological and sociological factors which prevent an immediate approval of the petitioner's application.

If the latter alternative is found to be necessary by the court it should include in its order the following:

(1) Fix a time for rehearing of the petitioner's application by the court within a stated reasonable time at which hearing additional testimony and evidence will be received and the circumstances justifying delay in approving the petitioner's application for

admission will be re-evaluated by the court in the light of altered conditions and a supplemental order entered in the case in accord with the findings of the court.

(2) Direct the school authorities to formulate and submit to the court within a reasonable time a plan designed to overcome the practical and psychological obstacles which tend to prevent an immediate integration of the schools under their jurisdiction. The effectiveness of the plan submitted and the efforts which the school authorities have made in good faith to carry it out should be considered by the court on subsequent rehearing of the case in determining whether additional delay is justified in granting the petitioner's application for admission.

IV Concrete evidence of the Supreme Court's adherence to complete administrative discretion is found in the case of *Far Eastern Conference, United States Lines Co., States Marine Corporation, et al. v. United States and Federal Maritime Board, 342, U. S. . 70, 96 L. Ed. 576, 72 S. Ct. 492 (1952).* The suit was brought by the government to enjoin the dual rate system established by an association of steamship companies known as the Far East Conference. The companies never submitted the rates to the Federal Maritime Board for approval, as provided for in §15 of the Shipping Act *(46 USC §814).* The defense, that the issues involved were of such a technical nature calling for the application of administrative exercise as to make it improper to bypass the Board, was upheld by the Court through Justice Frankfurter.

It was held that the administrative agencies should not be bypassed by the Courts in cases raising issues of fact not within the conventional experiences of judges or in cases requiring the exercise of administrative discretion, even though the facts, after they have been appraised by specialized competence, serve as a premise for legal consequences to be judicially defined.

V. "But the courtroom is not the arena for debating issues of educational policy. It is not our province to choose among competing considerations in the subtle process of securing effective loyalty to the traditional ideals of democracy, while respecting at the same time individual idiosyncrasies among a people so diversified in social origins and religious alliances. *So to hold would in effect make us the school board for the country." Minersville School District v. Gobitis, 310 U.S. 586, 60 S. Ct. 1010, 84 L. Ed. 1375 (1940), at 310 U. S. 598* (Italics supplied).

Part Three

Legal Authority of the Court to Permit a Period of Gradual Adjustment and Broad Powers of Administrative Discretion on the Part of Local School Authorities.

Parenthetically, the Court, in this case recognizes its limitations in the abstract sciences, with this language at page 597:

> "The precise issue, then, for us to decide is whether the legislatures of the various states and the authorities in a thousand counties and school districts of this country are barred from determining the appropriateness of various means to evoke that unifying sentiment without which there can ultimately be no liberties, civil or religious. To stigmatize legislative judgment in providing for this universal gesture of respect for the symbol of our national life in the setting of the common school as a lawless inroad on that freedom of conscience which the Constitution protects, would amount to no less than the pronouncement of pedagogical and psychological dogma in a field where courts possess no marked and certainly no controlling competence."

Constitutional guarantees of personal liberty are not always absolutes. Government has the right to maintain public safety and good order.

Keeping the control of public education close to the local people is perhaps the strongest tradition in American education. One of the predominant characteristics of American education is the variation in local policies and procedures in terms of unique local conditions. This is in sharp contrast to the highly centralized national system of education of other countries.

VI. "Civil liberties, as guaranteed by the Constitution, imply the existence of an organized society maintaining public order without which liberty itself would be lost in the excesses of unrestrained abuses." *Cox v. New Hampshire, 312 U. S. 569, 61 S. Ct. 762, 85 L. Ed. 1049 (1941) at 312 U. S. 574.*

A. Judicial Cases Permitting Time

Many decisions of the United States Supreme Court and the State Supreme Courts have recognized the necessity for granting a reasonable time in which to comply with the decree of the Court to avoid hardship or injury to public or private interests.

The present decision requires more consideration of the problem of *time* and adjustment than in the earlier cases since it is apparent that it involves a vast problem of human engineering, as contrasted to previous delays for adjustment granted in anti-trust cases, nuisance cases, and similar cases where economic problems of great magnitude confronted the courts.

I. *United States v. American Tobacco Co., 221 U. S. 106, 31 S. Ct. 632, 55 L. Ed. 663 (1911).* Recognizing the need for adjustment to its remedies in dealing with the unlawful combinations under the Sherman Anti-Trust Act, the Court, in order to avoid and mitigate possible injury to the interest of the general public, decreed the commercial combination to be illegal; and directed the Court below to hear the parties, ascertain, and determine a plan or method of dissolution, and to recreate a condition in harmony in law. To accomplish this, the Court granted a reasonable period (8 months) to effectuate its decree, while prohibiting any enlargement of the corporation's monopoly during this period.

Briefly stated, six months, with a possible extension of

C. Remarks

The aforesaid summary shows the wise recognition by the Supreme Court in the past of the need for time in effecting certain economic changes in our society in order to allow a period of healthy adjustment in sensitive areas. The cases also show a recognition of the need for adequate *local* discretion in the same areas. This line of reasoning should be applied to the even more sensitive area of desegregation which presents a vast problem of human engineering to resolve the social changes sought.

Samuel Gompers, one of America's greatest labor leaders recognized this fact some years ago when he stated:

> "One fact stands out in bold relief in history of men's attempts for betterment. That is that when compulsion is used, only resentment is aroused, and in the end nothing is gained. Only through moral suasion and appeal to men's reason can a movement succeed."

its works, to conduct its plant subject to inspection in specified ways, and between April 10 and October 1, not to "operate more green ore furnaces than it finds necessary to permit of operating its sulphuric acid plant at its normal full capacity." The State of Georgia agreed to refrain from asking for an injunction prior to October, 1916, if the stipulation was fully observed. Ducktown Company and the State were unable to agree, and in February, 1914, the latter moved for a decree according a perpetual injunction. Consideration of the matter was postponed upon representation that conditions had materially changed since 1907, and leave was granted to present additional testimony "to relate solely to the changed conditions," if any, which may have arisen since the case was then decided. A decree was granted restraining the Ducktown Company from continuing to operate its plant other than upon the terms and conditions set out by the Court *(Decree set forth in 237 U S. 678, 59 L. Ed. 1173, 35 S. Ct. 752 (1915)).*

A new decree was issued April 3, 1916 in *240 U. S. 650, 60 L. Ed. 846, 36 S. Ct. 465, (1916).* This decree modified the former decrees as to the escapement of fumes, as to records to be kept in regard thereto, and also as to expense of inspection and division of costs.

The three(3) cases, dealing with the problem of escaping nuisances, cover a span of nine (9) years (from 1907 to 1916). It illustrates how long a period is required to adjust to incorporeal changes and strongly suggests that human changes obviously require greater periods, since human emotions are not as easily controlled as are gaseous materials from sulphur and copper plants. Recognition of the need of calm planning in good faith to reconcile difficult problems has often been illustrated by the Court in contexts of economic and social changes as a result of its decisions.

IV. In *People of the State of New York v. State of New Jersey and Passaic Valley Sewerage Commissioners, 256 U.S. 296, 65 L. Ed. 937, 41 S. Ct. 492 (1921),* at page 313, Mr. Justice Clarke, in refusing to grant injunction relief against the operation of sewerage disposal by New Jersey into New York Harbor, wisely stated:

> "We cannot withhold the suggestion, inspired by the consideration of this case, that the grave problem of sewage disposal presented by the large and growing populations living on the shores of New York Bay is one more likely to be wisely solved by cooperative study and by conference and mutual concession on the part of Representatives of the States so vitally interested in it than by proceedings in any Court however constituted."

This quotation strongly suggests the need for time to work out these difficult intangible relations, in an atmosphere of cooperation and reason, rather than a tremendous disruption of social and economic conditions.

V. In the case of *Martin Bldg. Co. v. Imperial Laundry Co., 220 Ala. 90, 124 So. 82,* the Supreme Court of Alabama recognized the need for time in the use of injunctive relief. In a suit by the owner of an office building to enjoin a laundry from emitting smoke over the complainant's premises, the basis of the suit was the discomfort to the building's tenants, endangering of their health, and the resulting loss of tenants. The question of the abatement of the nuisance by improved technological laundry methods had to be further considered before the Court would grant or refuse injunctive relief, in view of suggested means of reducing amount of smoke by use of stokers. This acted to delay the force of the injunctive relief sought.

carries the implication of driving a course through gaps in the law, if not actually breaking it. Important to the courts, to public order, and to the profession is the whole field of conflict of laws. Oftentimes, the change ordered by legal enactment and judicial decision is so limited in scope that no actual evasion is drawn upon to block social change. Some times modes of adjustment may exist within the choice of individuals and groups—alternatives sanctioned in legal codes. It is in this borderline between public and private spheres of life that the doctrine of social change is of most importance to students of jurisprudence. It must be remembered that issues will be decided, not on the basis of an assumed code of ethics, *but on the basis of what is enforceable within the system of legality.*" (Italics supplied)

B. Administrative Discretion Cases

The use of administrative discretion and its limits have often been spelled out by the Court in the areas of administrative agencies. The Court has consistently emphasized that supervision and discretion should lie with the administrative agencies in the conducting of their functons as economic and political governing boards. Such emphasis is closely related to the administrative discretion which should exist in school boards, also.

I. In *United States v. Paramount Pictures, 334 U. S. 131, 92 L. Ed. 1260, 68 S. Ct. 915, (1948),* Mr. Justice Douglas reviewed a decree in an injunction suit by the United States under the Sherman Act to eliminate or qualify certain business practices in the motion picture industry. A provision in the decree that films be licensed on a competitive bidding basis was eliminated by the Supreme Court *as not likely to bring about the desired end as involving too much judicial supervision to make it effective.* This elimination was held to require reconsideration by the district court of its prohibition of the expansion of theatre holdings by distributors and provisions for divesting existing holdings. The propriety of including in the decree a provision for voluntary arbitration of questions arising thereunder was indicated, and denial of applications for leave to intervene by persons challenging the eliminated provision for competitive bidding was upheld.

B. Plans for Integration

The problem involves, among other things, the collective conscience or mores of our white citizens regarding segregation. That conscience simply stated, although of varying degrees of intensity, is that our people are not ready for desegregation. This was demonstrated conclusively by the survey which was made in Florida. This conscience is ingrained because it was nurtured and cherished throughout many generations as a way of life. It is deep-seated and its roots rest in fears of inter-marriage of the races, racial differences, superstitions, history, traditions and customs.

This community conscience until the Brown case had long years of legal sanction in the field of public education. Elimination of this legal sanction by no means eradicates the underlying collective conscience of the people in this field. *This attribute of the problem simply cannot be successfully solved overnight.*

This the Court undoubtedly appreciated by not making its desegregation decision immediately effective. Its questions and its delay of implementation indicate that it is conscious of what may be termed the equities of transition. The Court, we believe, is imbued with the need for gravity and for prudent concern in dealing with this collective conscience.

We think it realizes the need for social engineering, time, patience and community understanding. It senses the need for conditioning and education if implementation is ever to be a real success.

Free men are not automatons capable of being molded

reversed the district court, and held that the federal court's exercise of such jurisdiction should, on considerations of comity, be withheld on the ground that the state law provided for review of the commission's order in the state courts and for its stay pending such review.

Some persuasive language in support of state administrative discretion appears at pages 347-348:

> "The Alabama Commission, after a hearing held in the area served, found a public need for the service. The court below, hearing evidence *de novo,* found that no public necessity exists in view of the increased use and availability of motor transportation. We do not attempt to resolve these inconsistent findings of fact. We take note, however, of the fact that a federal court has been asked to intervene in *resolving* the *essentially local problem* of balancing the loss to the railroad from continued operation of trains . . . with public need for that service . . . directly affected. . . ." (Italics supplied).

More support to the *finality* of the discretion of the commission is found on page 348:

> " . . . and whatever the scope of review of commission findings when an *alleged denial* of *constitutional* rights is in issue, it is now settled that a *utility has no right to relitigate factual questions* on the ground that constitutional rights are involved. *New York v. United States, 331 U.S. 284, 334-336 (1947).* . . ." (Italics supplied)

More directly in point, at pages 349-350 is found the following:

> " . . . as adequate state court review of an administrative order based upon predominantly *local* factors is available to appellee intervention of a federal court is not necessary for the protection of federal rights. Equitable relief may be granted, only when the District Court, in its sound discretion exercised with the 'scrupulous regard for the rightful independence of state

governments which should at all times actuate the federal courts,' is convinced that the asserted federal right cannot be preserved except by granting the 'extraordinary relief of an injunction in the federal courts.' Considering that 'few public interests have a higher claim upon the discretion of a federal chancellor than the avoidance of needless friction with state policies,' the usual rule of comity must govern the exercise of equitable jurisdiction by the District Court in this case. . . ." (Italics supplied)

And again at page 351, "It is in the public interest that federal courts of equity should exercise their discretionary power to grant or withhold relief so as to avoid needless obstruction of the domestic policy of the states. . . ."

III. Further evidence of the broad discretion permitted by the Supreme Court to state administrative agencies is found in the case of *Burford v. Sun Oil Co., 319 U. S. 315, 87 L. Ed. 1424, 63 S. Ct. 1098 (1943)*. In this case the Sun Oil Co. attacked the validity of an order of the Texas Railroad Commission granting the petitioner Burford a permit to drill oil wells on a small plot of land in the East Texas oil fields. The U. S. District Court for the western district of Texas dismissed the suit by the Company; the Circuit Court of Appeals reversed the District Court. The Supreme Court through Mr. Justice Black reversed the Circuit Court of Appeals, and affirmed the District Court.

The Supreme Court held that a federal equity court may properly decline to exercise its jurisdiction invoked because of diversity of citizenship of the parties and alleged infringement of constitutional rights; to determine the validity of a state commission order, made under the authority of a conservation statute, granting a permit to drill oil wells on certain property, adjacent to lands owned by the complainant, where the state has provided a uniform method for the formation of policy and determination of cases by

the commission and the state courts; and where the judicial review of the commission's decisions in the state courts is expeditious and adequate; and where intervention by the lower federal courts is likely to cause delay and conflicting interpretation of the state law, dangerous to the success of state domestic policies.

The Court, at page 320, explicitly states:

> "The primary task of attempting adjustment of these diverse interests is delegated to the Railroad Commission, which Texas has vested with 'broad discretion' in administering the law."

The Court points out that the Texas courts have the power of thorough judicial review of the decisions of the Railroad Commisson; and that the Texas courts are working partners with the Commission in the business of creating a regulatory system for the oil industry. The Commission is charged with *principal responsibility* for *fact finding* and for *policy making* and the courts expressly disclaim the administrative responsibility. On the other hand, orders of the Commission are tested for "reasonableness" by trial de novo before the state court, and the Court may on occasion make a careful analysis of all the facts of the case in reversing a Commission order. The state court may even formulate new standards for the Commission's administrative practice, and suggest that the Commission adopt them.

The Supreme Court recognized that the existence of problems throughout the oil regulatory field creates a possibility of serious delay which can injure the conservation program; and that it may be necessary to stay federal action pending authoritative determination of difficult state questions. It recognized that questions of state regulation of the oil industry so clearly involve basic problems of Texas policy that equitable discretion should be exercised to give the Texas courts the first opportunity to consider them.

VII. Speaking of the 14th Amendment, the U. S. Supreme Court in *Barbier v. Connolly, 113 U. S. 27, 5 S. Ct. 357, 28 L. Ed. 923 (1885),* said at page 31:

> "But neither the amendment—broad and comprehensive as it is—nor any other amendment, was designed to interfere with the power of the State, sometimes termed its police power, to prescribe regulations to promote the health, peace, morals, *education and good order of the people...*" (Italics supplied)

VIII. In *Euclid v. Ambler Realty Co., 272 U. S. 365, 47 S. Ct. 114, 71 L. Ed. 303 (1926),* it said at page 387:

> "Regulations, the wisdom, necessity, and validity of which, as applied to existing conditions, are so apparent that they are now uniformly sustained, a century ago, or even a half century ago, probably would have been rejected as arbitrary or oppressive . . . while the meaning of constitutional guaranties never varies, the scope of their application must expand or contract to meet new and different conditions which are constantly coming within the field of their operation . . . Laws and regulations must find their justification in some aspect of the police power, asserted for the public welfare."

Part Four

Considerations Involved in Formulating Plans For Desegregation

A. Changes in the Law

Dr. Rupert B. Vance, Professor of Sociology, University of North Carolina, past president of the American Sociological Society, writing in the Journal of Public Law, Emory University Law School, Vol. 3, Spring 1954, Number 1, page 42, says:

> "National prohibition offers an example of a change in law which did not carry through to change in the collective behavior and attitudes of society. In spite of our respect for the Constitution, resistance increased and law enforcement was insufficient to bring about social change. This resistance assumed the form of violations, as well as evasions, of the law. Under this situation it can be said that the 18th Amendment was repealed in order to preserve respect for the law. This occurred in spite of the fact that the initial change had the support of public opinion as represented in the (1) affirmative vote of legislatures of the states, and was implemented both by (2) federal legislation, as in the Volstead Act, and (3) supporting legislation in many states. For students of social change, the contrast with a decision of the Supreme Court is impressive.
>
> "Thus, while students of l... realize that social change can be and has been implemented by legal enactment and judicial decision, it is also realized that resistance to social change is of many types. Here we can say that jurisprudence, as a social science, has shared in the responsibility of determining the extent to which any desired social change is enforceable by law. Laws may be violated, and they may be evaded. Evasion

and transformed forthwith by a new and revolutionary judicial concept which does not square with their collective conscience.

The enormity of the problem of compliance gives great pause. We do not deal with implementation of a decree against a single individual or even a minority. A successful response to the judgment requires reconciliation to it of a great majority of our people. The Court on its part needs for the enforcement of its decree the amelioration of time which is said to be a great Healer. It needs the rallying of those who will stand by the law of the land because it is such whether they agree with it or not and the patience of wise administration which eschews haste, precipitate action and premature procedures.

The Court stands not in need of the whip and the scourge of compulsion to drive our people to obedience, but rather the rational solution of time in which the loyalty, patience and understanding of the law-abiding will come forward and lead the way to peaceful, reasonable and successful compliance.

Not only to be considered is the need of reconciling this collective conscience to desegregation but others of importance to be considered include the safety of school children, the peace of the community, the mutitudinous administrative problems affected, the impact upon teachers' jobs, particularly Negro teachers', the transportation of school children, the revisions of laws and regulations, the redistricting of attendance areas, the reallocation of physical school plant facilities and others involved in the transition from a segregated school system to a non-segregated system. All require time, wise administration and patience for their solution.

Gradual effective adjustment to integration presupposes that there will be a plan. But because there is a wide variety of local conditions, no specific plan can be outlined which

would be acceptable under all conditions and in all communities.

We think integration must proceed in Florida on a county by county basis because of the fundamental differences in various areas of the state which we have attempted to demonstrate in this brief.

A great many plans for integration have been developed in Florida and other states and all of them have their adherents. A plan of gradual integration starting with the first grade and working on up through high school over a 12 year period is believed by some advocates to be the answer for their community but it is rejected in other places.

Another plan for beginning the integration process at the college level and gradually working down to the first grade can be supported by valid arguments, but it too is rejected by many educational leaders as being unworkable in some communities.

Other plans which have been advanced include a gradual reorganization of school attendance areas; designated schools whose students will be composed of volunteers from both races during the transition period; a simultaneous integration of all school grades over a period of time based on the scholastic level of the students as determined by examinations. These and many other plans are being considered by school authorities whose job it will be in the final analysis to devise a plan which will be accepted and will work in their particular school districts.

The one factor which all of these plans share in common is the need for *sufficient time* to carry them out and the one point on which agreement can be reached by school authorities who are willing to undertake a program of integration is that the plan adopted for their specific area must be unique in that it will take into consideration the exact problems of that area and no other.

If this planning and action is permitted by the Court, we believe that local school authorities should take into consideration two primary factors: first, the material aspects of integration which include the use of present school buildings, the construction of new buildings, transportation, teachers' jobs and assignments, school populations within attendance areas and the administration impracticabilities and inequities that would arise in these dislocations in any effort to effect a too hasty non-segregation; second, the intangible considerations including community thinking, customs, mores, overt acts that might result from the impact of premature integration, the scholastic standards of the schools and the feelings of children.

We realize that objection has been made to gradualism in seeking methods of integrating white and Negro schools, that delay might tend to create feelings of hostility and encourage organized opposition. The advocates of this theory apparently feel that the shock treatment is to be preferred and that if a difficult job has to be done, the quicker it is done, the better.

In this belief we are positive they are mistaken. Strong opposition already exists in the South to desegregation. It will be intensified in direct proportion to the amount of hasty precipitation and coercion that is applied.

Already there is springing up in our state opposition organizations, some of which through their literature encourage violence. Burning of crosses and circulation of hate literature are becoming more and more prevalent. But minimizing these manifestations of defiance are thousands of law-abiding citizens of both races, many influential newspapers and loyal organizations who are trying to meet the situation calmly and patiently. But their attitudes have always been buttressed on the assumption of gradualism and local autonomy. If that assumption is cut from under them by a decree of immediate desegregation or even a decree of a period of short delay which does not permit a

large degree of local determination, we frankly doubt whether we can save our public school system. This objection to gradualism may be valid in Northern states where segregation has been practiced but where the people as a whole do not share the intense feelings on racial differences which have become an ingrained part of the culture of the South.

There is no reason to think that sufficient delay in integration of the schools of Florida to allow for a period of gradual adjustment would create new problems or intensify those already existing.

The problems are already here and must be recognized realistically by anyone conscientiously seeking a solution. There is every logical reason to believe that any attempt to use the shock treatment of immediate compulsory integration of schools in Florida would only result in translating the present passive intellectual differences in thought and emotional feelings to an active, positive and violent physical resistance.

When all is said and done, it may be that about the best advice on the subject was contained in a speech by Governor David S. Walker of Florida in 1867 to a meeting of Freedmen in Tallahassee[1].

Governor Walker said:

> "The great question now to be solved, is whether two different races can live in peace together under the same government with equal political rights. In my reading of history, I do not remember any instance in which this has ever been done. But God has placed the work upon us and with His blessing we must try our best to accomplish it. In the first place, therefore, I say let each one of us of all colors resolve to cultivate kindly relations with one another and never allow our-

1. Semi-weekly Floridan, Tallahassee, Florida, April 23, 1867, page 2.

selves to be arrayed in hostility to each other—let us always speak kindly to and of one another. I have never known a man in my life who had the true principles of a Christian gentleman in him, who would wantonly wound the feelings of any human being, however humble."

Part Five

CONCLUSION

There are two ways in which the Brown decision may be viewed by history. First, it may be considered as a seismic shock which struck without warning and engulfed a large part of the nation in a tidal wave of hate and inflamed emotions and carried away a public school system which took half a century and billions of dollars to build, or

Second, it may be looked upon as a high goal which this Court has fixed for men of good will to strive to attain and which they may attain in due course if rational consideration is given to human frailty and faith is maintained in the slow but sure upward movement of democracy.

Many think that our democracy is now face to face with the toughest job in practical government it has ever had to tackle without going to war. Some way must be found to protect the constitutional rights of a minority without ignoring the will of the majority. We think the only answer is time and the patient efforts of those who value democracy more than their personal longings and private prejudices. We hope that this court will accept this answer.

RICHARD W. ERVIN
Attorney General of the State of Florida

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(Appendix A)

Results of a Survey of Florida Leadership Opinion on the Effects of the U. S. Supreme Court Decision of May 17, 1954 Relating to Segregation in Florida Schools

Introduction

As a result of the decision of the United States Supreme Court of May 17, 1954, declaring unconstitutional racial segregation in public education, Florida and other southern states are confronted with problems of tremendous gravity and complexity.

While it enunciated a new principle of law, the Court did not prescribe the manner in which this principle should be translated into action in the states and communities affected. Instead, it restored the cases to the docket for further argument as to the method of adjustment which should be called for in subsequent decrees, inviting the Attorneys General of states requiring or permitting segregation in public education to appear as *amici curiae.*

In anticipation of the preparation of a brief for submission in response to this invitation, the Attorney General of the State of Florida requested the assistance of social scientists and other educators in compiling facts concerning the problems which the State of Florida would encounter in complying with the decision of the Court.

This is their report.

RICHARD W. ERVIN

Attorney General

ATTORNEY GENERAL'S RESEARCH ADVISORY COMMITTEE FOR THE STUDY OF PROBLEMS OF DESEGREGATION IN FLORIDA SCHOOLS

The committee was chosen by the Attorney General to assist him in conducting a survey to determine leadership opinion among Florida citizens regarding problems created by the U. S. Supreme Court's decision of May 17, 1954, abolishing segregation in the public schools.

The individuals asked to serve on this committee were chosen on the basis of their professional standing in the field of education; their specialized knowledge and training which would be of value in conducting such a survey; and their reputation for civic-mindedness and impartiality. The committee selected Dr. Lewis Killian, Associate Professor of Sociology at Florida State University, to act as director of research and coordinator for the project. While certain parts of this report were written by Dr. Killian and others, the entire report and all its findings have been reviewed and approved by the entire membership of the committee.

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(Ex Officio)

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Florida State University

Mr. Thomas D. Bailey
State Superintendent of Public Instruction
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Florida State University
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The Report and the Conclusions*

Just as the effects of segregation, held by the Court to be discriminatory, are essentially psychological, the problems of desegregation are also social and psychological as much as they are legal.

An eminent student of race relations in the South, Guy B. Johnson, has said, "*Anyone who thinks that the transition from segregation to racial co-education can be made without problems, tensions, and even personal tragedies is a fool. Anyone who thinks that the transition means the end of civilization is also a fool.*"[1]

The purpose of this study was to delineate as far as is possible the problems, the tensions and, perhaps, the tragedies, which might be expected to arise in the course of this transition in Florida communities. This was a fact finding, research study. There was no intent to predict whether this transition will take place nor to make value-judgments as to whether it should or should not occur.

Prediction of the problems which might arise if desegregation of public schools were undertaken in the near future are based upon four types of data. These are:

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* Prepared by Dr. Lewis Killian, Department of Sociology, Florida State University.

1. "The Impending Crisis of the South," *New South*, VIII, No. 5 (May, 1953), (Atlanta: Southern Regional Council), 5.

1. The expressed attitudes of various groups of leaders, both white and Negro, toward the Court's decision and toward the possible implementation of it in Florida.

2. An historical analysis of the way in which Negroes have availed themselves of a privilege from which state restrictions were removed by a similar federal court decision, the privilege of voting in primary elections.

3. An analysis of relevant information pertaining to school administration, instructional services, and the quality of education as they might be affected by desegregation.

4. The experience of other states and communities in which programs of desegregation have been undertaken.

In the study of human behavior it is impossible to ask all of the questions which are relevant to that behavior. The selection of questions always implies certain assumptions concerning the situation being studied, and these assumptions should be made explicit.

The basic assumptions of this study are:

1. That the Court will desire a minimum of intergroup conflict and public disorder in any program of desegregation which might be undertaken. On this assumption, information indicative of the likelihood of conflict and widespread disorder in various situations becomes highly important.

2. That expressed attitudes are to some extent and in certain types of situations indicative of later behavior. This is particularly important when it is the attitudes of occupants of key positions in the power structure of a group which are concerned.

3. That the attitudes of people in leadership, power, and prestige roles are of more importance as determinants of

social change than are the attitudes of larger numbers of people not occupying such roles.

4. That the behavior of people in one situation is to some extent indicative of the behavior of the same or different people in similar but not identical situations.

The conclusions of this study are based on the findings of several separate, but related, constituent studies which, together, constitute the general research project. Each study is presented in detail in a separate subsection of the report. The general conclusions, drawn from all of these studies, are found in the chapter preceding the detailed reports of the separate studies.

The sub-studies, in order of presentation, are:

1. An attitude-opinion poll, based on mailed questionnaires, of 9 white and 2 Negro groups of leaders throughout the state. (Page 113)

2. An attitude-opinion poll, based on personal interviews, of white leaders in 10 selected counties and Negro leaders in 8 of these counties. (Page 153)

3. An historical analysis of trends in Negro voter registration in Florida, 1940-1954. (Page 177)

4. An analysis of relevant information pertaining to school administration and instructional services as they might be affected by desegregation. (Page 185)

5. An intensive study, utilizing various methods, of leadership attitudes and opinions in a metropolitan area and a rural area in southeastern Florida. (Page 201)

GENERAL CONCLUSIONS

1. On the basis of data from all relevant sources included in this study, it is evident that in Florida white leadership opinion with reference to the Supreme Court's decision is far from being homogeneous. Approximately three-fourths

of the white leaders polled disagree, in principle, with the decision. There are approximately 30 per cent who violently disagree with the decision to the extent that they would refuse to cooperate with any move to end segregation or would actively oppose it. While the majority of white persons answering opposed the decision, it is also true that a large majority indicated they were willing to do what the courts and school officials decided.

2. A large majority of the Negro leaders acclaim the decision as being right.

3. Only a small minority of leaders of both races advocate immediate, complete desegregation. White leaders, if they accept the idea that segregation should be ended eventually, tend to advocate a very gradual, indefinite transition period, with a preparatory period of education. Negroes tend to advocate a gradual transition, but one beginning soon and lasting over a much shorter period of time.

4. There are definite variations between regions, counties, communities and sections of communities as to whether desegregation can be accomplished, even gradually, without conflict and public disorder. The analysis of trends in Negro registration and voting in primary elections, shows similar variations in the extent to which Negroes have availed themselves of the right to register and vote. At least some of these variations in voting behavior must be accounted for by white resistance to Negro political participation. This indicates that there are regional variations not only in racial attitudes but in overt action.

Regional, county and community variations in responses to questionnaires and interviews are sufficiently marked to suggest that in some communities desegregation could be undertaken now if local leaders so decided, but that in other widespread social disorder would result from immediate

steps to end segregation. There would be problems, of course, in any area of the state, but these would be vastly greater in some areas than in others.

5. While a minority of both white and Negro leaders expect serious violence to occur if desegregation is attempted, there is a widespread lack of confidence in the ability of peace officers to maintain law and order if serious violence does start. This is especially true of the peace officers themselves, except in Dade County. This has important implications. While it is true that expressed attitudes are not necessarily predictive of actual behavior, there seems little doubt that there is a minority of whites who would actively and violently resist desegregation, especially immediate desegregation. It has been concluded from the analysis of experiences with desegregation in other areas, "A small minority may precipitate overt resistance or violent opposition to desegregation in spite of general acceptance or accommodation by the majority."[2]

6. Opposition of peace officers to desegregation, lack of confidence in their ability to maintain law and order in the face of violent resistance, and the existence of a positive relationship between these two opinions indicates that less than firm, positive action to prevent public disorder might be expected from many of the police, especially in some communities. Elected officials, county and school, also show a high degree of opposition. Yet it has been pointed out, again on the basis of experience in other states, that the accomplishment of efficient desegregation with a minimum of social disturbance depends upon.

A. A clear and unequivocal statement of policy by leaders with prestige and other authorities;

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2. Kenneth B. Clark, "Findings," *Journal of Social Issues*, IX, No. 4 (1953), 50.

B. Firm enforcement of the changed policy by authorities and persistence in the execution of this policy in the face of initial resistance;

C. A willingness to deal with violations, attempted violations, and incitement to violations by a resort to the law and strong enforcement action;

D. A refusal of the authorities to resort to, engage in or tolerate subterfuges, gerrymandering or other devices for evading the principles and the fact of desegregation;

E. An appeal to the individuals concerned in terms of their religious principles of brotherhood and their acceptance of the American traditions of fair play and equal justice.

It may be concluded that the absence of a firm, enthusiastic public policy of making desegregation effective would create the type of situation in which attitudes would be most likely to be translated into action.[4]

7 In view of white feelings that immediate desegregation would not work and that to require it would constitute a negation of local autonomy, it may be postulated that the chances of developing firm official and, perhaps, public support for any program of desegregation would be increased by a decree which would create the feeling that the Court recognizes local problems and will allow a gradual transition with some degree of local determination.

8. There is a strong likelihood that many white children would be withdrawn from public schools by their parents and sent to private schools. It seems logical, however, that this practice would be confined primarily to families in the higher income brackets. As a result, a form of socio-economic class segregation might be substituted for racial segregation in education.

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4. Experience shows that when the steps listed above have been taken, predictions of serious social disturbance have not been borne out.

9. It is evident that a vast area of misunderstanding as to each other's feelings about segregation exists between the races. White leaders believe Negroes to be much more satisfied with segregation than Negroes are and Negro leaders believe that whites are much more willing to accept desegregation gracefully than whites proved to be. Hence a logical first step towards implementing the principle set forth by the Court, and one suggested by both whites and Negroes, would seem to be the taking of positive, cooperative steps to bridge this gap and establish better understanding between the two groups.

10. Although relatively few Negro leaders and teachers show concern about the problem, white answers indicate that Negro teachers would encounter great difficulty in obtaining employment in mixed schools. To the extent that desegregation might proceed without parallel changes in attitudes towards the employment of Negro teachers in mixed schools, economic and professional hardships would be worked on the many Negro teachers of Florida.

11. Since 1940, and particularly since 1947, the State of Florida has made rapid and steady progress toward the elimination of disparities between white and Negro educational facilities as measured by such tangible factors as teacher salaries, current expenditure per pupil, teacher qualifications, and capital outlay expenditure per pupil.

12. In spite of the current ambiguity as to the future of dual, "separate but equal" school facilities the State is proceeding with an extensive program of construction of new school facilities for both white and Negro pupils, with a recommended capital outlay of $370 per Negro pupil and $210 per white pupil. Both this and the previous finding indicate that, while these steps have been taken within the framework of a dual educational system, there is a sincere

desire and willingness on the part of the elected officials and the people of Florida to furnish equal education for all children.

13. Available achievement test scores of white and Negro high school seniors in Florida indicate that, at least in the upper grades, many Negro pupils placed in classrooms with white pupils would find themselves set apart not only by color but by the quality of their work. It is not implied that these differences in scores have an innate racial basis, but it seems likely that they stem from differences in economic and cultural background extending far beyond the walls of the segregated school, into areas of activity not covered by this decision.

14. Interracial meetings and cooperative activities already engaged in by teachers and school administrators in many counties demonstrate steps that can be, and are being taken voluntarily and through local choice to contribute to the development of greater harmony and understanding between whites and Negroes in Florida communities.

Leadership Opinion By Questionnaire ...and Conclusions*

Although all of the people of Florida would be affected, directly or indirectly, by any move to end racial segregation in the public schools, some groups have a more direct and intense involvement in the situation than do others.

People connected with county school systems such as school board members, school trustees, superintendents, principals, teachers and supervisors would play key roles in putting any plan for desegregation into effect. Police officers, judges and county attorneys would be required to deal with cases of conflict and disorder which might arise. Parents are deeply involved not only as parents but as voters and taxpayers. As moulders of public opinion newspaper editors, radio station managers and ministers have an important relationship to any developing social change. Legislators and county commissioners would be faced with the task of formulating new state and county policies relating to this significant legal and social change.

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* Prepared by Dr. Lewis Killian, Department of Sociology, Florida State University.

In an attempt to get at the attitudes and opinions of these important segments of the population, questionnaires were mailed to the following groups:

1. All members of the Florida Peace Officers Association.
2. School principals, white and Negro, and school supervisors.
3. Negro PTA presidents, white PTA presidents, council chairmen and board members.
4. School board members and school trustees.
5. County judges, circuit judges, state attorneys, county solicitors and county commissioners.
6. Newspaper editors.
7. Radio station managers.
8. Members of the state legislature.
9. Ministers (a 10 per cent sample of certain denominations).

Practical considerations precluded polling certain other groups. The large number of teachers, white and colored, in the state and the fact that so many would be away from home at the time of the survey made a poll of their opinions impractical. It was practical, however, and perhaps more important, to question principals and supervisors, as school people who work intimately with the teachers in positions of leadership and authority. Similarly, the parent group polled was limited to PTA officers because of the tremendous number of parents involved and the non-availability of any list from which a sample could be drawn.

The ministers presented a special problem. The size of the population of ministers, which could only be estimated, was obviously large. At the same time it was extremely difficult to obtain comprehensive mailing lists for even part of the multitude of denominations to which these ministers

might belong. Mailing lists were obtained for the following denominations: Baptist, Methodist, Episcopal, Roman Catholic, Presbyterian, and Assembly of God. Questionnaires were mailed to a 10 per cent sample of the clergymen on each of these lists. Forms were also sent to a sample of Negro Methodist and Baptist ministers, but the returns were too small for use. In many cases they were returned marked "Unclaimed" or "Moved, Left No Address."

The Questionnaires.

Nine different questionnaires were used in this survey. Questions designed to elicit the following information were included on all of them:

1. The position held by the subject and the section of the state in which he lived and worked.

2. The subject's personal feelings about the rightness of the Court's decision and action which should be taken as a result of it.

3. The subject's estimate of the likelihood of resistance to desegregation in his community, the forms this resistance might take, and the ability of law enforcement officers to maintain law and order in the event of serious violence.

The questionnaire sent to the peace officers sought also an estimate of the likelihood that peace officers would enforce school attendance laws for mixed schools. All other questionnaires included questions concerning the following additional items:

4. The subject's estimate of the feelings about the decision and its implementation of other groups in the state and in his community.

5. The subject's opinion as to the method which would be most effective in ending public school segregation.

6. Opinions as to the grades in which it would be easiest

to start admitting colored and white children to the same schools.

Finally, principals and supervisors, school officials, legislators and PTA officers were asked whether certain things which might constitute either aids or obstacles to desegregation might happen in the event schools are desegregated in the next few years.

Questionnaire Returns and Method of Analysis.

A total of 7,749 questionnaires were mailed. Time did not permit a follow-up wave, but an effort was made to increase returns by prefacing each form with a personal appeal from the Attorney General and by enclosing a stamped, self-addressed envelope.

Useable questionnaires returned number 3,972, 51.26 per cent of the number mailed. The number and percentage of returns for each group are shown in Table 1. The lowest percentage of returns is seen to be that for the Negro PTA presidents, 21.5 per cent. The rate of return for all groups may be regarded as satisfactory since it has been found that in mail polls usually less than 20 percent of the questionnaires are returned.[3]

Practical considerations, of which there are many in what is essentially "action research," precluded the use of standard techniques for control of the sample by ascertaining the characteristics of non-respondents. Hence extreme caution must be exercised in generalizing from these data to any population.

It is possible to speculate as to some of the reasons for non-returns. It is known that some forms did not reach the subject for one reason or another. Unfortunately

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3. Katz, Daniel, and Hadley Cantril, "Public Opinion Polls," *Sociometry*, I (1937), 155-179.

237 questionnaires were returned too late for tabulation. In the case of refusals other possible reasons must be considered. In some groups, a relatively low degree of education may have characterized persons who did not respond. It is known that in some cases public officials, particularly judges, failed to reply because they felt it was unethical for them to answer such an inquiry, even though anonymity was promised them. Some questionnaires were returned not completed but with a brief comment. The nature of many of these comments suggests that many of the white subjects who refused to respond were violently opposed to desegregation.

On the basis of these speculations, it seems likely that the prevalent bias of white non-respondents is in the direction of opposition to the Supreme Court's decision and to attempts to implement it. In the case of Negroes, it is more likely that distrust of the motives of the research and fear of expressing their opinions were the causes of failure to reply.

All questions were of the check-list type. Questionnaires were coded, punched on cards, and machine tabulated.[4] For purposes of analysis, the subjects were regarded as populations not necessarily representative of any larger populations. Hence percentages are presented but no tests of statistical significance have been made. Conclusions are based, therefore, only upon gross differences in responses.

Even though these respondents cannot be regarded as a representative sample, the nature of their selections makes them important as groups. In spite of its scientific limitations, this poll constitutes the most comprehensive

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4. Statistical work was done by the Sociology Research Laboratory of the Florida State University, under the direction of Prof. Robert McGinnis and Dr. John M. Haer. All responsibility for interpretation of the results is assumed by the Research Advisory Committee, however.

and extensive assessment of public opinion in Florida through the use of scientifically devised instruments that is available. The fact that approximately one-half of such groups of leaders, in the case of whites, and approximately one-third, in the case of Negroes, expressed the opinions indicated below is of itself important.

Findings.

Bearing in mind the caution which should be used in generalizing to larger populations, the following conclusions may be drawn from the responses of those subjects who did return questionnaires:

1. White groups differ greatly from each other in their attitudes towards the Court's decision, ranging from nearly unanimous disagreement to a slight predominance of favorable attitudes.

In Table 2 there can be seen the percentages of respondents in each group who selected each of the choices indicative of his personal feelings. Table 3 shows combinations of these choices into categories of "Agreement," "Neutral," and "Disagreement." From these tables it can be seen that peace officers are overwhelmingly opposed to the principle that segregation should be ended. On the other hand, a slight majority of white principals, supervisors and ministers indicate agreement with the principle established by the court, although they vary in their opinions as to when it should be implemented. Other groups ranking high in disagreement with the decision are county officials, school officials and white PTA leaders.

2. White groups also differ from each other in willingness to comply with whatever courts and school boards decide to do regardless of their personal feelings.

In Table 4 combinations of choices shown in Table 2 are presented to show willingness to comply with official policy or intention to resist or refuse to cooperate. In this case elected officials, including county officials, school officials, and legislators, rank high in intention to oppose action to bring about desegregation, as do white PTA leaders. White principals and supervisors rank very low in intention to oppose desegregation.

3. Peace officers are the white group most opposed to desegregation. (Table 3).

4. Almost no whites believe that desegregation should be attempted immediately. (Table 2).

5. A large majority of both Negro groups are in agreement with the Court's decision declaring segregation unconstitutional. (Table 3).

6. While only a small minority of both Negro groups believe that desegregation should be attempted immediately, an even smaller minority would oppose attempts to bring about desegregation or refuse to cooperate. (Table 2).

7. Only a minority of whites in all groups believe that opponents of desegregation would resort to mob violence in trying to stop it. A larger proportion, but still a minority, believe that serious violence would result if desegregation were attempted in their community in the next few years.

Table 5 shows the predictions of the occurrence of mob violence and serious violence by all groups. It is evident that "mob violence" and "serious violence" do not mean exactly the same thing to the subjects. It may be noted that the peace officer group ranks highest in percentage predicting both mob violence and serious violence.

8. A yet smaller minority of both of the Negro groups

anticipate mob violence or serious violence as a result of steps towards desegregation. (Table 5).

9. The majority of all white groups are not sure that peace officers could cope with serious violence if it did occur in their communities, replying either "No" or "Don't Know" to the question.

Table 6 shows the percentage of each group replying either "No" or "Don't Know" to the question, "Do you think the peace officers in your community would be able to maintain law and order if serious violence is started?" Again it may be noted that the peace officer group ranks highest in percentage showing doubt as to the ability to avoid or minimize violence.

10. A much smaller proportion of both Negro groups express doubts as to the ability of law enforcement officials to deal with serious violence. (Table 6).

11. The majority of most of the white groups believe that peace officers could maintain law and order if minor violence occurred.

Table 7 shows the percentage of respondents in each group who answered "Yes" to the question, "Do you think the peace officers in your community would be able to maintain law and order if minor violence is started?" The white PTA leaders differed markedly from other groups, only 34.13 per cent answering "Yes."

12. The Negro groups did not differ greatly from the white groups in the proportion believing that police could cope with minor violence. (Table 7).

13. Only 13.24 per cent of 1669 peace officers believe that most of the peace officers they know would enforce attendance laws for mixed schools.

14. A majority of the members of all white groups except peace officers, who were not asked; radio station managers;

and ministers, believe that most of the people of Florida and most of the white people in their communities disagree with the Court's decision.

Table 8 shows the percentage of the 10 groups asked to assess the feelings of other people who felt that most of the members of the groups about which they were asked disagreed with the decision.

15. In the five white groups asked, from one-fourth to one-half of the respondents believed that most of the Negroes in their community were opposed to the desegregation ruling. (Table 8).

16. A much smaller proportion of both Negro groups believe that most of the people of Florida, most of the whites in their community, and particularly the Negroes in their communities are in disagreement with the principle of desegregation. (Table 8).

It was seen earlier that only a small minority of the Negro respondents personally disagreed with the decision. It may be seen now that only a small minority of these Negroes think that other Negroes in their communities are in disagreement with the court. Furthermore, a much smaller proportion of Negroes than of whites think that most white people in Florida are in favor of segregation as a legal principle.

17. Only a small minority of all groups, white and Negro, believe that immediate assignment of children to schools on the basis of geographical location rather than race would be the most effective way of ending public school segregation.

Table 9 shows the percentage of each of 8 groups choosing as the most effective method immediate desegregation, a very gradual transition, and either or both of two gradual but relatively early methods of ending segregation. While the peace officers were not asked this

question, their answers to the question on "personal feelings about the decision" (Table 2) indicate almost unanimous opposition to immediate desegregation.

18. All groups think a gradual program of desegregation would be most effective. Negroes, however, prefer that the process start within the next year or two with immediate, limited integration much more frequently than do whites. The whites prefer a very gradual transition with no specified time for action to begin. (Table 9).

19. Whites who expressed an opinion believe that the primary grades and the colleges are the levels on which desegregation could be initiated most easily. On the other hand, almost as many Negroes believed that segregation should be ended on most or all grade levels simultaneously as believed it should be ended first at the lowest and highest grade levels.

20. The maintenance of discipline in mixed classes by Negro teachers is regarded as a potential problem by a majority of white principals, supervisors and PTA leaders. A much smaller proportion of Negroes regarded this as a problem, with a majority of Negro principals believing that colored teachers could maintain discipline in mixed classes.

Table 11 shows the percentage of each group queried as to possible problems who indicated definite belief that certain things would or would not happen, thereby creating problems for mixed schools.

21. A majority of all white groups believe that white people would resist desegregation by withdrawing their children from the public schools, but a much smaller proportion of Negroes, less than a majority, believe that this would happen. (Table 11).

22. Almost two-thirds of white school officials—superintendents, board members, and trustees—believe that ap-

TABLE 3

PER CENT AGREEING OR DISAGREEING WITH THE DECISION, BY GROUPS

Group and Number	Agree	Neutral	Dis-agree	No Infor-mation	Total
Peace Officers (N-1669)	9.7		89.3	1.0	100.0
Principals and Sup. (W) (N-762)	52.9	4.9	40.4	1.8	100.0
PTA (W) (N-375)	29.6	1.6	66.1	2.7	100.0
Editors (N-118)	50.0	4.2	42.4	3.4	100.0
Radio Station Mgrs (N-54)	42.6	7.4	42.6	7.4	100.0
County Officials (N-224)	21.0	.9	70.9	7.1	99.9
School Officials (N-309)	23.0	.6	70.9	5.5	100.0
Legislators (N-79)	31.6	2.5	64.6	1.3	100.0
Ministers (N-101)	62.3	4.0	31.9	2.0	100.2
Negro Principals (N-177)	84.2	8.5	3.9	3.4	100.0
PTA (Negro) (N-86)	70.9	5.8	12.7	10.4	99.8

plications of Negroes to teach in mixed schools would be rejected. (Table 11).

23. Nearly three-fourths of school officials believe that it would be difficult to get white teachers for mixed schools. (Table 11).

24. Almost half of school officials and a little over 40 per cent of white PTA leaders believe that the people of their communities would not support taxes for desegregated schools, but only about 20 per cent of Negro PTA leaders believe that such support would not be forthcoming. (Table 11).

25. In the case of all potential problems on which both Negroes and white were questioned a smaller proportion of Negroes than of whites indicate belief that problems would arise as a result of desegregation. (Table 11).

26. In the case of peace officers there is a positive relationship between personal disagreement with the decision and lack of confidence in the ability of peace officers to cope with serious violence. There is an even higher positive relationship between belief that segregation should be kept and belief that peace officers would not enforce school attendance laws for mixed schools.

Table 12 shows the number of peace officers who feel that the police could or could not maintain law and order if serious violence occurs, according to their attitude towards the decision and its implementation. Table 13 shows belief as to whether peace officers would enforce school attendance laws by attitude towards the decision. The officers who answer "Don't know" to these questions are omitted from these tables. While peace officers were asked what they thought *other* law enforcement officials could or would do and were not asked what they themselves would do, it is evident that these subjects are projecting their own feelings and, perhaps, their intentions into other peace officers.

Regional Variations.

The responses to certain items of the two largest groups polled, the peace officers and the white school principals and supervisors, were analyzed by region of the state in which the respondents lived. The 67 counties of Florida were grouped into 8 regions defined by social scientists at the Florida State University in *Florida Facts*.[1] These regions and the counties each includes are:

Region	*Counties*
I	Bay, Escambia, Gulf, Okaloosa, Santa Rosa (Extreme northwest Florida).
II	Baker, Calhoun, Citrus, Columbia, Dixie, Franklin, Gadsden, Gilchrist, Hamilton, Hernando, Holmes, Jackson, Jefferson, Lafayette, Leon, Levy, Liberty, Madison, Suwannee, Taylor, Wakulla, Walton, Washington. (Northwest and north central Florida).
III	Alachua, Bradford, Clay, Putnam, Union. (Northeast Florida, inland).
IV	Lake, Marion, Orange, Osceola, Polk, Seminole, Sumter. (Central Florida, inland, largely rural).
V	Brevard, Duval, Flagler, Indian River, Nassau, St. Johns, Volusia. (Northeast and Middle Florida coastal region, includes Jacksonville metropolitan area).
VI	Charlotte, Collier, Hillsborough, Lee, Manatee, Pasco, Pinellas, Sarasota. (Southwest coastal, includes Tampa-St. Petersburg, Bradenton-Sarasota metropolitan area).
VII	DeSoto, Glades, Hardee, Hendry, Highlands, Okeechobee. (South central, inland, rural, many migrant farm laborers).
VIII	Broward, Dade, Martin, Monroe, Palm Beach, St.

1. Tallahassee, Florida: School of Public Administration, The Florida State University.

Lucie. (Southeast coastal, contains Miami metropolitan area and some migratory labor areas).

Clear-cut regional variations in attitudes and opinions are found to exist, as is indicated by the following findings:

27. Although the majority of peace officers in all regions feel that segregation should be kept, the percentage feeling so varies from 83 per cent in two regions to 100 per cent in one region.

Personal feelings of peace officers about the decision are presented, by region, in Table 14. The variation in the number of respondents in the different regions seems to be explainable in terms of the number of counties in the different regions and the size of population. While it was impossible to ascertain the number of questionnaires mailed to each region, the distribution of returns of peace officer questionnaires approximates the distribution of population by region. It should be noted that Region VII ranks highest in percentage of peace officers who oppose desegregation, while Regions I and VIII rank lowest.

28. The percentage of white principals and supervisors who are in disagreement with the decision varies from 20 per cent to 60 per cent in different regions.

The percentage of white principals and supervisors agreeing and disagreeing with the decision, by region, is shown in Table 15. Again Region VII ranks highest in amount of opposition and Region VIII ranks lowest.

29. A large majority of white principals and supervisors in all regions indicate that they would comply with the decision regardless of personal feelings, but the percentage varies from 76 per cent in Region VII to approximately 94 per cent in Regions VI and VIII. (Table 16).

30. The percentage of peace officers predicting mob violence as a method of resisting desegregation varies from

20 per cent in Region VIII to nearly 63 per cent in Region VII. (Table 17).

31. Percentages of both peace officers and white principals and supervisors predicting serious violence in the event desegregation is attempted vary widely between some regions. (Table 18).

32. The majority of both peace officers and white principals and supervisors in all regions doubt that the police could maintain law and order if serious violence occurred, but there are some regional variations. (Table 19).

Responses of Legislators.

Although the 79 members of the state legislature who returned questionnaires constitute almost 45 per cent of the 176 legislators and legislative nominees to whom the forms were sent, generalizations to the entire membership of the legislature on the basis of their responses are entirely unwarranted. Any attempt to predict the action of the legislature at its next session would be even more presumptuous. The responses of these legislators to two special questions asked of them are presented below as a matter of interest, however.

The legislators were asked to indicate which of five possible courses of action should be followed at the next session of the legislature. The percentage checking each course, and the details of the five courses of action, are shown in Table 20.

The legislators were also asked whether they believed that there is any legal way to continue segregation in Florida Schools indefinitely. Of the 79 respondents, 34.20 per cent replied "Yes", 25.31 per cent replied "No", and 39.32 per cent answered "Don't Know", or gave no answer.

CONCLUSIONS

1. It is evident that white respondents drawn from different areas of leadership vary sharply in their feelings about the rectitude of the Supreme Court's decision of May 17, 1954. At least this small, but not unimportant, segment of leaders in Florida is far from unanimous in allegiance to the principle of segregation in public education.

2. There are definite regional variations in attitudes towards the decision, in predictions of the likelihood that serious violence may occur if desegregation is attempted, and in confidence in the ability of the police to maintain law and order if serious violence does occur.

3. A majority of all groups except Negro principals do not feel confident that the police in their communities could cope with serious violence. This is particularly true of the peace officers themselves. At the same time, serious violence is anticipated by only a minority of all groups, although by almost 50 per cent of the peace officers.

4. Withdrawal of white children from the public schools, the maintenance of discipline in mixed classes by Negro teachers, refusal to employ Negro teachers for mixed schools, and difficulty in obtaining white teachers are the outstanding potential problems found to be expected.

5. It is evident that the white and Negro groups view the decision and the problem which desegregation might create quite differently, and that they do not understand each other's attitudes. The majority of the whites are, in various degrees, opposed to the decision; the Negroes are in favor of it. Yet the whites believe that the Negroes are opposed to desegregation to a much greater extent than those Negro groups polled are found to be. Furthermore, the white and Negro groups assess Negro opinion differ-

ently, a much larger proportion of whites than Negroes believing that most Negroes prefer segregated schools.

The whites view the effecting of desegregation as a much more difficult and dangerous problem than do the Negroes, many more of them foreseeing serious problems and even violence. On the other hand, the Negroes have more confidence in the ability and the willingness of the whites to adapt to desegregation than do the whites themselves.

6. The majority of all groups, white and Negro, believe that desegregation should be put into effect gradually rather than abruptly and immediately. More Negroes than whites, however, are in favor of early integration on a limited scale and beginning in the next year or two. The whites favor a more indefinite and remote form of gradualism, if they will countenance the idea of desegregation at all.

7. The existence of a positive relationship between the attitudes of peace officers towards the decision and their predictions of the inability of police to control serious violence suggests the existence of a tendency to project their own feelings into situations which might arise and into other persons involved. Such highly subjective predictions are very likely to be indications of what the respondent himself would do, or feels he could do, in the situation. Such predictions might very well take on the character of "self-fulfilling prophecies."[2] If police officers do not believe that they or others would be able to maintain law and order if serious violence occurs, the likelihood that they will attempt wholeheartedly to do so is accordingly reduced.

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2. An outstanding American sociologist, Robert K. Merton, has defined the "self-fulfilling prophecy" as a "false definition of the situation evolving a new behavior which makes the originally false conception come true." See his article, "The Self-Fulfilling Prophecy," *The Antioch Review*, VIII (Summer, 1948), 193-210.

TABLE 9

PER CENT OF EACH GROUP DESIGNATING VARIOUS METHODS OF ENDING SEGREGATION AS MOST EFFECTIVE

Group and Number	METHOD				
	Immediate	Very Gradual	Other Gradual*	No Information	Total
Peace Officers (N-1669)	.5	9.2		90.3[1]	100.0
Principals and Sup. (W) (N-771)	3.1	71.7	19.5	5.4	99.7
P.T.A. (W) (N-375)	4.3	65.1	13.7	17.0	100.1
Editors (N-118)	5.1	60.2	19.5	15.3	100.1
Radio Station Man. (N-54)	14.8	46.3	25.9	12.9	99.9
County Officials (N-230)	5.2	49.1	16.0	29.6	99.9
School Officials (N-309)	4.9	62.8	9.7	22.6	100.0
Legislators (N-79)	11.4	49.4	17.7	21.5	100.0
Ministers (N-101)	5.9	47.5	33.7	12.9	100.0
Negro Principals (N-174)	9.8	31.6	55.7	2.9	100.0
P.T.A. (Negro) (N-86)	13.9	26.7	46.5	12.8	99.9

*"Other gradual" includes "Keeping existing school boundaries for the time being, but immediately letting children who want to do so go to the closest school regardless of race," and "A one or two year period of preparation before any schools are integrated."

1. These peace officers gave no information or answered "Segregation should be kept."

SAMPLE QUESTIONNAIRE

COUNTY SUPERINTENDENTS, SCHOOL BOARD MEMBERS, SCHOOL TRUSTEES:

1. In what county do you serve?.....

2. How long have you served in public school work? (Check one)
   1)—less than 2 years; 2)—3-4 years; 3)—5-8 years; 4)—9-12 years; 5) over 12 years.

3. Check the sentence that most nearly describes your feelings toward the Supreme Court decision declaring segregation in public schools unconstitutional:

   1)—Firmly in favor of the decision, and believe that schools should be immediately opened to both races throughout Florida.
   2)—Firmly in favor of the decision; feel schools should be gradually combined, taking into consideration places which need more preparation.
   3)—Feel that such a decision should have been made eventually, but believe we are not ready for it. Feel we must move very slowly and cautiously.
   4)—Neither in favor of nor against the decision; will agree with whatever the courts and the school officials do.
   5)—Against the decision, but will agree with whatever the courts and school officials do.
   6)—Firmly against the decision; will not cooperate in ending public school segregation.
   7)—Firmly against the decision; will actively oppose any attempt to end segregation in Florida schools.

4. .....Which one of the above statements do you think describes the feelings of most of the people in Florida? (Write the answer in the blank)

5. .....Which describes the feelings of most of the school teachers and administrators in your county?

6. .....Which describes the feelings of most of the white parents in your county?

7. .....Which describes the feelings of most of the colored parents in your county?

Suppose that in the next few years the court ordered school officials to admit colored and white children to the same schools.

8. Do you think anyone in your community would try to stop this? Yes..... No.....

9. If they did, what would they do? (Check your answers)

   1)—Petition to stop combining schools
   2)—Hold protest meetings
   3)—Keep their children home from school
   4)—Start individual violence
   5)—Take part in mob violence

10. Would you resign rather than carry out such court order? Yes..... No..... Don't know.....

11. Do you think there would be violence in your community if colored and white children are admitted to the same schools in the next few years? (Check one)

   1)—Serious violence 3)—No violence
   2)—Minor violence 4)—Do not know

Do you think your peace officers would be able to maintain law and order if: (Check yes, no, or don't know)

12. Serious violence is started? 1).....Yes 2).....No 3).....Don't know

13. Minor violence is started? 1).....Yes 2).....No 3)..... Don't know

14. Check the method you believe would be most effective in ending public school segregation:

   1)—Immediate action to assign all children to school on basis of geographical location rather than race.

   2)—Keeping existing school boundaries for the time being, but immediately letting children who want to, go to the closest school regardless of race.

3)—A one or two year period of preparation before any schools are integrated.

4)—A very gradual transition over a period of years.

15. In what grades do you think it would be easiest to start admitting colored and white to the same schools? (Check your answer)

1)—Grades 1, 2 and 3
2)—Grades 1 through 6
3)—High school
4)—All grades 1 through 12
5)—College and university
6)—Don't know

Suppose in the next few years a few colored children wanted to go to the nearest school, a white school. What do you think would happen: (Check yes, no, or don't know)

	Yes	No	Don't Know
16. Would the School Board admit them readily?	.....	.....	.....
17. Would the School Board admit them only to certain schools?	.....	.....	.....
18. Would the School Board admit them if a court ordered it?	.....	.....	.....
19. Would the School Board try to fight a court order?	.....	.....	.....

Suppose schools are integrated in the next few years. What do you think would happen? (Check yes, no or don't know)

	Yes	No	Don't Know
20. Would it be harder to get white teachers?	.....	.....	.....
21. Would it be harder to get colored teachers?	.....	.....	.....
22. Would applications of colored teachers to teach in mixed schools be accepted?	.....	.....	.....
23. Would many white teachers treat colored children unfairly?	.....	.....	.....
24. Would many colored teachers treat white children unfairly?	.....	.....	.....
25. Would colored teachers be able to discipline white children?	.....	.....	.....
26. Would higher school taxes be needed for the integrated schools at first?	.....	.....	.....

27. Would your community support taxes for integrated schools? ....
28. Would school bus drivers treat colored children fairly? ....
29. Would school bus drivers encourage white students to treat colored children fairly? ....
30. Are there any accredited private schools in your community other than kindergartens? ....
31. Would people try to start private schools? ....
32. If you like, comment on the problems the Supreme Court decision brings, and make any suggestions, using back of this sheet.

SAMPLE QUESTIONNAIRE

FLORIDA PEACE OFFICERS:

1. Check the position you hold:

—Deputy Sheriff —Constable
—State Highway Patrolman —Town Marshal
—City Chief of Police —Other
—City Policeman

2. In what county do you serve? .....
3. The U. S. Supreme Court recently declared segregation in public schools unconstitutional. Which do you think: (Check one)

1)—That segregation in schools should be kept
2)—That schools should be gradually opened to both races over a period of years?
3)—That colored children who want to go to white schools should be admitted immediately?

4. Suppose that in the next year or two the Court ordered school officials to admit colored and white children to the same schools.

a. Would anyone in your community try to stop this? Yes..... No.....

b. If they did, what would they do? (Check your answer)

1)—Petition to stop combining schools
2)—Hold protest meetings
3)—Keep their children home from school
4)—Start individual violence
5)—Take part in mob violence

5. Would there be violence in your community if colored and white children are admitted to the same schools? (Check one)

1)—Serious violence
2)—Minor violence
3)—No violence
4)—Do not know

a. Would your existing law enforcement staff be able to maintain law and order if

1) *serious* violence is started

a)—Yes
b)—No
c)—Do not know

2) *minor* violence is started

a)—Yes
b)—No
c)—Do not know

6. Would most of the peace officers you know enforce school attendance laws for mixed schools? (Check one)

1)—Yes
2)—No
3)—Do not know

7. If you want to say more or make suggestions about law enforcement and segregation, please use the back of this sheet.

TABLE 1

QUESTIONNAIRES SENT AND RETURNED, BY GROUPS

Group	Number Sent	Number Returned	Per Cent Returned
Peace Officers	3200	1669	52.16
Principals and Supervisors (white)	1216	771	63.40
PTA Leaders (white)	751	375	49.93
Newspaper Editors	219	118	53.88
Radio Station Managers	78	54	69.23
County Officials	533	230	43.15
School Officials	500	309	61.80
Legislators	176	79	44.89
Ministers	191	101	52.89
Negro Principals	485	180	37.11
PTA Leaders (Negro)	400	86	21.50
TOTAL	7749	3972	51.26

TABLE 2

PER CENT EXPRESSING VARIOUS

Groups and Number	1	2	3	4
Peace Officers (N-1669)	.5	9.2		
Principals and Supervisors (W) (N-762)	.4	13.2	38.4	4.9
PTA (W) (N-375)				
Editors (N-54)	.8	14.4	33.9	4.2
Radio Station Managers (N-54)	1.8	14.8	24.0	7.4
County Officials (N-224)		2.7	18.3	.9
School Officials (N-309)		2.9	20.0	.6
Legislators (N-79)		7.5	22.8	2.5
Ministers (N-101)	1.0	34.6	26.7	4.0
Principals, (N) (N-177)	11.9	55.4	11.3	8.5
PTA Negro (N-86)	12.8	44.2	8.1	5.8

* The attitudes indicated by number are as follows:

1. Firmly in favor of the decision; believe that schools should be immediately opened to both races. (For peace officers, "Colored children who want to go to white schools should be admitted immediately.")
2. Firmly in favor; feel schools should be gradually combined, taking into consideration places which need more preparation. (For peace officers, "Schools should be gradually opened to both races over a period of years.")
3. Feel that such a decision should have been made eventually, but believe we are not ready for it. Feel we must move very slowly and cautiously.
4. Neither in favor of nor against the decision; will agree with whatever courts and school officials do.

ATTITUDES TOWARDS DECISION, BY GROUPS

Attitude*							
5	6	7	8	9	10	11	Total
				89.3		1.0	100.0
26.8	4.9	7.9	.8	.9	1.4	.4	100.0
20.0	14.4	29.3	.8	2.4	1.1	1.6	100.0
16.1	6.8	16.1	.8	3.4	2.5	.8	99.8
20.4	11.1	11.1	1.8		1.8	5.6	99.8
22.8	12.0	30.4		5.8	3.1	4.0	100.0
21.7	9.7	34.6		4.9	2.9	2.6	99.9
16.4	5.1	38.0	1.3	5.1		1.3	100.0
8.0	10.0	11.9		2.0		1.0	99.2
1.1	1.1		5.6	1.7	2.2	1.1	99.9
2.3	4.6	4.6	5.8	1.2	5.8	4.6	99.8

5. Against the decision, but will agree with whatever courts and school officials do.
6. Firmly against; will not cooperate in ending segregation.
7. Firmly against; will actively oppose any attempt to end segregation.
8. Any combination of 1, 2, or 3 indicating agreement with decision.
9. Any combination of 5, 6, or 7 indicating disagreement with decision. (For peace officers, "Segregation in schools should be kept.")
10. Any other combination.
11. No information.

TABLE 4

PER CENT WILLING OR UNWILLING TO COMPLY WITH COURTS AND SCHOOL OFFICIALS, BY GROUPS

Group and Number*	Would Comply	Would Not Comply	No Information	Total
Principals and Sup. (W) (N-762)	84.5	13.6	1.8	99.9
PTA (W) (N-375)	51.2	46.1	2.7	100.0
Editors (N-118)	70.3	26.3	3.4	100.0
Radio Station Mgrs. (N-54)	70.4	22.2	7.4	100.0
County Officials (N-224)	44.6	48.2	7.1	99.9
School Officials (N-309)	45.3	49.2	5.5	100.0
Legislators (N-79)	50.6	48.1	1.3	100.0
Ministers (N-101)	74.3	23.9	2.0	100.2
Negro Principals (N-177)	93.7	2.8	3.4	99.9
PTA (Negro) (N-86)	79.0	10.4	10.4	99.8

* These combinations could not be made for peace officers.

TABLE 5

PER CENT OF EACH GROUP PREDICTING MOB VIOLENCE AND SERIOUS VIOLENCE

Group and Number	Predict Mob Violence	Predict Serious Violence
Peace Officers (N-1669)	29.2	46.6
Principals and Sup. (W) (N-771)	8.9	22.8[1]
PTA (W) (N-375)	17.3	33.7[2]
Editors (N-118)	8.5	20.3
Radio Station Managers (N-54)	11.1	18.5
County Officials (N-230)	23.0	35.3[3]
School Officials (N-303)	31.0	44.9
Legislators (N-79)	27.8	39.2
Ministers (N-101)	10.9	13.9
Negro Principals (N-180)	4.4	4.5[4]
PTA (Negro) (N-86)	5.8	8.1

1. N-762.
2. N-371.
3. N-224.
4. N-174.

TABLE 6

PER CENT OF EACH GROUP DOUBTING ABILITY OF PEACE OFFICERS TO COPE WITH SERIOUS VIOLENCE

Group and Number	Answered "No"	Answered "Don't Know"	Answered "No" or "Don't Know"
Peace Officers (N-1669)	55.7	26.8	81.0
Principals and Sup. (W) (N-762)	34.7	40.7	72.4
PTA (W) (N-375)	42.1	36.0	78.1
Editors (N-118)	35.6	24.6	60.2
Radio Station Man. (N-54)	33.3	22.2	55.5
County Officials (N-224)	41.1	25.4	66.5
School Officials (N-303)	49.2	27.4	76.6
Legislators (N-79)	49.4	21.5	70.9
Ministers (N-191)	23.8	40.7	64.5
Negro Principals (N-177)	11.3	31.6	42.9
PTA (Negro) (N-86)	18.6	33.7	52.3

TABLE 7

PER CENT OF EACH GROUP WHO BELIEVE PEACE OFFICERS COULD COPE WITH MINOR VIOLENCE

Group and Number	Answered "Yes"
Peace Officers (N-1669)	50.9
Principals and Sup. (W) (N-362)	52.1
P.T.A. (W) (N-375)	34.1
Editors (N-118)	74.6
Radio Station Man. (N-54)	59.3
County Officials (N-224)	51.3
School Officials (N-303)	41.6
Legislators (N-79)	60.8
Ministers (N-101)	64.4
Negro Principals (N-177)	61.0
P.T.A. (Negro) (N-86)	46.5

TABLE 8

PER CENT OF GROUPS POLLED WHO BELIEVE MOST OF OTHER SPECIFIED GROUPS DISAGREE WITH THE DECISION

Group and Number*	Specified Group: Most People in Florida	Whites in Community	Negroes in Community
Principals and Sup. (W) (N-756)	65.6[1]	73.0	25.1
P.T.A. (W) (N-375)	61.6	87.5	42.5
Editors (N-118)	59.3	69.5	**
Radio Station Man. (N-54)	42.6	72.3	**
County Officials (N-224)	74.8[2]	80.8	47.8
School Officials (N-303)	75.7[3]	85.5	52.5
Legislators (N-79)	69.1	78.6	39.1
Ministers (N-101)	48.6*	48.6	**
Negro Principals (N-180)	7.8	26.7	8.9
P.T.A. (Negro) (N-86)	16.3	37.2	15.1

1. N-770.
2. N-230.
3. N-309.

*For ministers, this question asked how most of the members of their congregation felt.

**This group not asked how Negroes as a separate group felt.

TABLE 10

PER CENT OF EACH GROUP DESIGNATING SPECIFIED GRADE LEVELS AS EASIEST PLACE TO START DESEGREGATION

Group and Number*	GRADE LEVEL Grades 1-3	College	1-3 and College	All Other	Don't Know or No Inf.	Total
Principals and Sup. (W) (N-771)	34.2	33.6	12.1	10.0	10.0	99.9
P.T.A. (W) (N-375)	36.5	23.5	4.5	5.3	30.1	99.9
Editors (N-78)	37.3	16.9	7.6	15.2	22.9	99.9
County Officials (N-230)	26.1	18.3	3.5	10.0	42.2	100.1
School Officials (N-309)	30.4	23.3	4.2	7.4	34.6	99.9
Legislators (N-79)	22.8	34.2	5.1	10.1	28.0	100.2
Ministers (N-101)	29.7	19.8	8.9	18.9	22.9	100.2
Negro Principals (N-180)	23.3	13.9	11.1	43.9	7.8	100.0
P.T.A. (Negro) (N-86)	23.3	16.3	1.2	40.7	18.6	100.1

* These combinations could not be made for peace officers.

TABLE 11

PER CENT OF EACH GROUP DESIGNATING VARIOUS PROBLEMS AS BEING LIKELY TO ARISE

Problem Area	Principals & Sup. (W) (771)	PTA (W) (375)	School Officials (303)	Principals (N) (180)	PTA (N) (86)
Discipline by White Teachers	16.7	.....	.....	3.9	.....
Discipline by Negro Teachers	55.2	65.9	66.2	6.7	20.9
Lowering of Academic Standards	48.6	.....	.....	11.7	.....
Unfairness by White Teachers	17.0	31.2	22.3	6.7	19.8
Unfairness by Negro Teachers	15.8	26.3	16.6	10.6	11.7
Unfairness to Negroes by Bus Drivers	22.6	.....	25.3	14.4	.....
Development of Private Schools	61.1	70.4	64.3	12.2	18.6
Withdrawal of Whites from Public Schools	55.4	57.6	63.4	12.2	18.6
School Officials Resigning	.....	.....	32.3	.....	.....
Difficulty in Hiring White Teachers	.....	.....	72.2	.....	.....
Rejection of Negro Teacher Applications	.....	.....	62.8	.....	.....
Lack of Tax Support for Mixed Schools	.....	41.3	49.4	.....	19.8

TABLE 12

CONFIDENCE OF PEACE OFFICERS IN ABILITY TO COPE WITH SERIOUS VIOLENCE, BY ATTITUDE TOWARDS DESEGREGATION*

Attitude	Belief that Police Could Maintain Order If Serious Violence Started		
	They Could	They Couldn't	Total
Segregation should be kept	193	836	1029
Segregation should be ended, gradually or immediately	54	64	118

$r_t = +.45$

* Peace officers who answered "Don't Know" have been omitted from this table.

TABLE 13

CONFIDENCE OF PEACE OFFICERS THAT POLICE WOULD ENFORCE SCHOOL ATTENDANCE LAWS FOR MIXED SCHOOLS, BY ATTITUDE TOWARDS DESEGREGATION*

Attitude	Judgment of Willingness of Police to Enforce Attendance Laws		
	They Would	They Wouldn't	Total
Segregation should be kept	151	796	947
Segregation should be ended, gradually or immediately	67	36	103

$r_t = +.65$

* Peace officers who answered "Don't Know" have been omitted from this table.

TABLE 14

PER CENT OF PEACE OFFICERS EXPRESSING VARIOUS ATTITUDES, BY REGION

Region	Attitude Expressed				
	Keep Segregation	Desegregate Gradually	Desegregate Immediately	No Inf.	Total
I (N-133)	83.5	15.0		1.5	100.0
II (N-130)	93.1	4.6	.8	1.5	100.0
III (N-83)	86.7	12.0		1.2	99.9
IV (N-269)	92.9	6.3	.7		99.9
V (N-269)	94.8	3.3	.7	1.1	99.9
VI (N-335)	90.1	9.2		.6	99.9
VII (N-27)	100.0				100.0
VIII (N-423)	83.4	14.2	.9	1.4	99.9

TABLE 15

PER CENT OF WHITE PRINCIPALS AND SUPERVISORS AGREEING OR DISAGREEING WITH THE DECISION, BY REGION

Region	Agree	Disagree	Neutral	No Inf.	Total
I (N-71)	53.5	42.2	1.4	2.8	99.9
II (N-151)	38.4	54.3	6.6	.7	100.0
III (N-38)	60.5	36.8	2.6		99.9
IV (N-135)	47.4	46.7	3.7	2.2	100.0
V (N-99)	47.5	40.4	8.1	4.0	100.0
VI (N-117)	65.0	30.8	3.4	.8	100.0
VII (N-30)	33.3	60.0	6.7		100.0
VIII (N-121)	71.9	20.7	5.0	2.5	100.1

TABLE 16

PER CENT OF WHITE PRINCIPALS AND SUPERVISORS WILLING OR UNWILLING TO COMPLY, BY REGION

Region	Would Comply	Would Not Comply	No Inf.	Total
I (N-71)	81.7	15.5	2.8	100.0
II (N-151)	78.1	21.2	.7	100.0
III (N-38)	78.9	21.1	....	100.0
IV (N-135)	80.0	17.8	2.2	100.0
V (N-99)	84.8	11.1	4.0	99.9
VI (N-117)	94.0	5.1	.8	99.9
VII (N-30)	76.7	23.3	....	100.0
VIII (N-121)	93.4	4.1	2.5	100.0

TABLE 17

PER CENT OF PEACE OFFICERS PREDICTING MOB VIOLENCE, BY REGION

Region	Per Cent Predicting Mob Violence
I (N-133)	33.8
II (N-130)	36.1
III (N-83)	26.5
IV (N-269)	39.9
V (N-269)	31.2
VI (N-335)	27.5
VII (N-27)	63.0
VIII (N-423)	20.6

TABLE 18

NUMBER AND PER CENT OF PEACE OFFICERS AND WHITE PRINCIPALS AND SUPERVISORS PREDICTING SERIOUS VIOLENCE, BY REGION

Region	GROUP			
	Peace Officers		Principals and Supervisors	
	No.	Per Cent	No.	Per Cent
I	75	56.4	20	28.2
II	81	62.3	55	36.4
III	39	47.0	10	26.3
IV	144	53.5	28	20.7
V	129	48.0	20	20.2
VI	159	47.5	16	13.7
VII	16	59.3	13	43.3
VIII	135	31.9	12	9.9

TABLE 19

NUMBER AND PER CENT OF PEACE OFFICERS AND WHITE PRINCIPALS AND SUPERVISORS DOUBTING THAT PEACE OFFICERS COULD COPE WITH SERIOUS VIOLENCE, BY REGION*

Region	Peace Officers		Principals and Supervisors	
	Number	Per Cent	Number	Per Cent
I	105	78.9	53	74.6
II	109	83.8	111	73.5
III	74	89.2	27	71.1
IV	223	82.9	110	81.5
V	230	85.5	73	73.7
VI	265	79.1	76	65.0
VII	24	88.9	22	73.3
VIII	314	74.2	80	66.1

* Based on total of respondents who answered "No" or "Don't Know" to question, "Do you think the peace officers in your community would be able to maintain law and order if serious violence is started?"

TABLE 20

NUMBER AND PER CENT OF LEGISLATORS FAVORING EACH OF FIVE POSSIBLE COURSES OF LEGISLATIVE ACTION

Course of Action	Number	Per Cent
Legislation to preserve segregation indefinitely by whatever means possible	32	40.5
Legislation to preserve segregation for a few more years, contemplating eventual integration but permitting time for development of public acceptance	8	10.1
Legislation permitting voluntary compliance with Court's decision by local school officials, after consultation with patrons	4	5.1
Setting up legal machinery to permit gradual adjustment on a local option basis with provision for interracial committees, group discussions by school patrons and other means to bring about harmonious and peaceful compliance over a requisite period of time	18	22.8
No legislative action	10	12.7
No information given	7	8.8
Total	79	100.0

Leadership Opinion By Personal Interview ...and Conclusions*

While the mail questionnaire method may produce a large volume of data in a short time, this method has many disadvantages. One of the most important is the difficulty encountered in analyzing the answers to open-ended questions, questions which the subject may answer in his own words. Another limitation is the difficulty encountered in reaching subjects who are not included on some mailing list, such as informal, non-official leaders in a community power structure. Hence the mail questionnaire study of leadership opinion in the state was supplemented by a study of leadership opinion in 10 selected counties by the use of personal interviews.

Selection of Counties.

The 10 counties selected by the Research Advisory Committee for intensive study included: Charlotte, Hillsborough and Pinellas, in the southwest coastal region; Orange and Lake, in the central, so-called "Ridge Section" of the

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*Prepared by Dr. Lewis Killian, Department of Sociology, Florida State University.

peninsula: Duval, in the northeast coastal region; Lafayette, a rural, inland county in the the north central portion; Gadsden, a rural county in the northwest part of the state; and Washington, a rural county, and Escambia, an urban county, in the extreme northwest portion of the panhandle of Florida.

In the selection of these counties, the following factors were considered:

1. Representation of the different sections of the state. (The southeast section was not included because an intensive study was made in Dade County and nearby areas by the University of Miami).

2. Inclusion of both rural and urban counties.

3. Inclusion of counties with less than 10 per cent Negro population (2) or more than 50 per cent (1). The state has 5 counties in the former category and 2 counties in the latter.

4. Inclusion of certain counties which, on the basis of preliminary evidence, appeared to be areas of relatively high or relatively low resistance to desegregation.

Method of Study.

Interviews were conducted by 16 public school employees from various counties, 12 white and 4 Negro principals or supervisors. No interviewer was assigned to work in his home county. For unavoidable practical reasons, no interviews with Negro subjects were obtained in two counties, and in three other counties only a limited number were obtained, these by white interviewers.

The interviewers, all carefully chosen for the task, were given one day of intensive training in the selection of subjects for interview, interviewing techniques, and interview recording. A schedule consisting of thirteen open-ended questions, similar to the structured questions used on the

mail questionnaire and supplemented by suggested probing questions, was furnished. The interviewers were also given a list of community leaders, official and non-official, whom they should attempt to interview. It should be noted that the field workers were instructed to follow the advice of local informants in selecting subjects, both white and Negro, considered to be important figures in the power structure of the community.

Each interviewer wrote, at the completion of his field work, an independent analysis of the situation in the county he studied. In addition, a content analysis was made of all interviews by a team of eight analysts, four white and four Negro, from the State Department of Education, the Florida A. and M. University, and the Florida State University. In this analysis the interviews were coded for IBM tabulation.[1] After analysis and coding were completed, approximately one-half of the interviews were coded for two items a second time by another member of the team, white and Negro members exchanging interviews. A reliability check on these items revealed a high degree of reliability between ratings by separate analysts, indicating that personal and racial biases in the interpretation of the interview protocols were slight.

Findings.

Interviews were obtained from a total of 460 white subjects and 195 Negro subjects. Of the white subjects, 263 were official leaders (County, city and school officials, judges, peace officers, and school employees) and 197 were non-official leaders (business, professional, civic club, re-

1. Statistical analysis of the interview data was done in the Sociology Research Laboratory of the Florida State University, under the direction of Prof. Robert McGinnis and Dr. John M. Hacr. Responsibility for the interpretation of the results is assumed by the Research Advisory Committee.

ligious, labor, youth). There were 42 Negro subjects who were school employees, and 153 non-official Negro leaders, including a large number of insurance men, undertakers, and independent business men.

Distribution of the interviews by counties, for Negro and white, are shown below:

County	*White*	*Negro*
Charlotte	34	None
Duval	47	31
Escambia	40	64
Gadsden	27	7
Hillsborough	79	43
Lafayette	20	None
Lake	43	7
Orange	47	21
Pinellas	90	13
Washington	33	9

On the basis of statistical analysis of the interviews and the impressions reported by the field staff, the findings indicated below were reached. Although a different method of study was used, these findings do not differ significantly from those of the questionnaire study.

These findings are:

1. The majority of white subjects (67.7 per cent) are in disagreement with the decision, but only 4.1 per cent of the Negroes interviewed disagreed.

Even white subjects who thought the decision was right expressed, for the most part, fear that violence would occur if desegregation were not worked out gradually or if, in the words of some, "it is crammed down our throats." Some whites violently opposed to the decision made such statements as, "The decision is an outrage; it is wrong and will never work," and "These colored children should be treated in such a way that they would not want to come back to school."

On the other hand, a Negro interviewer summarized the opinions of Negroes in one county in the words, "God is behind the court's decision. He will see that it is carried out, but he doesn't want us to hasten," and in another county in the words, "This problem should have been met squarely years ago. There is no need attempting to circumvent, but settle the problem once and for all instead of passing it into the laps of our children."

2. Slightly less than half (45.7) per cent of the whites indicated that they would not cooperate with the decision of the courts or local school officials as to how to effect desegregation, only 16 per cent indicating that they would actively oppose attempts to end segregation.

Caution must be exercised in inferring that a major segment of the white leadership represented here would "go along" with any plan for desegregation, regardless of its nature. It must be considered that many informants may have been indicating willingness to comply with what they thought the courts and, particularly, the school officials would do, but not with anything that they might possibly decide.

3. One reason given by white subjects for disagreement with the decision was that it is a violation of "states' rights" and, in effect, a negation of local autonomy.

4. White leaders are almost unanimously opposed to any immediate steps to end segregation in their communities, only 4 out of 460 favoring such steps.

5. Of the Negro leaders, only 28.2 per cent favor immediate ending of all segregation in public education in their communities, but 58.9 per cent believe that the transition should begin within the next three years.

6. Whites and Negroes differ sharply in their assessment of white community opinion on the decision, 77 per cent of the white leaders believing most of the white people in their

communities disagree with the decision, but only 25.1 per cent of the Negroes believing this.

7. Whites and Negroes differ sharply in their assessment of Negro opinion in their communities, 54.3 per cent of the white leaders believing that most Negroes disagree with the decision, but only 6.1 per cent of the Negro leaders believing so.

8. While only 30 per cent of the whites believe that even a few Negro children could be admitted now to a previously all white school without resulting violence, 76.4 per cent of the Negroes believe that this could be done without causing violence.

9. Of the subjects answering the question (210 white, 82 Negro), a majority of Negroes (89 per cent) believe that peace officers could and would maintain law and order if violence started, but only 46.7 per cent of the whites believe this. A great many subjects in both groups did not answer this question.

10. While many white leaders seem to expect trouble and even violence to occur if desegregation is attempted, there was no definite group or category of people which was specified by more than 10 per cent of the respondents as being likely to cause this trouble.

11. White leaders designated the primary grades and the colleges and universities most frequently as the best place to start desegregation if it were undertaken (primary—31.7 per cent; college—13.3 per cent; both—8.5 per cent) but Negro leaders designated all grades from primary through high school most often (32.3 per cent).

12. Specific problems other than violence which might arise from desegregation were identified by a greater proportion of whites than of Negroes, although only a minority of each group designated any given eventuality as a likely problem. The problems most often designated by whites were: getting white teachers to teach in mixed schools; using Negro teachers in mixed schools; maintaining discipline on school busses and in classes; getting white parents to

send their children to mixed public schools; keeping present academic standards; and getting tax support for mixed schools.

13. In no county does it appear that more than a small segment of whites is ready to accept immediate and abrupt desegregation. In two counties, however, a majority of the white leadership interviewed (in one, 59.5 per cent, in the other, 72.4 per cent) believe that desegregation can be accomplished peacefully and effectively if it is done over a period of years, with a preparatory program of education, and at a rate determined by the local citizens.

14. In one county, the high frequency of belief among white leaders that segregation should be kept, that violence would result from desegregation, and that peace officers could not cope with such violence, makes it appear very likely that conflict and disorder would result if an attempt to start desegregation by any means was undertaken even within from five to ten years from the present.

15. Inspection of the interview protocols and the reports of the field staff reveal that even within counties there is wide variation in readiness by whites of different communities to accept desegregation.

In one county there is one community in which both Negro and white leaders fear serious violence, in which organized, violent opposition to desegregation is anticipated, and in which, indeed, organized but peaceful opposition has already appeared. In the same county is a community in which, in the judgment of both white and Negro interviewers, gradual but effective desegregation could be accomplished in the next few years. Similar situations exist in all but two of the counties, both predominantly rural but differing in region and proportion of Negroes in the population.

16. Concrete suggestions for effective first steps towards gradual desegregation offered by subjects include a period of education preparatory to the first steps, and the working together in interracial committees of adults who would study together the problems confronting their community.

THE PERSONAL INTERVIEW SCHEDULE

Position:

How Selected:

1. Just what do you understand the Supreme Court decision to mean?

2. How do you feel about the decision?
   Probing:

   Feel it was right?
   Feel it was wrong?
   Feel it was neither right nor wrong—just not sure?

   If right,
   Not at this time?
   We need time?
   We should try to end segregation immediately?

   If wrong,
   Should cooperate because it is the law?
   Will not cooperate in ending segregation?
   Will actively oppose the action?

   If neutral,
   Will do whatever the courts and school officials say?

3. How do you think most of the people of Florida feel about it?

4. How do you think most of the people of this community feel about it?

   Probing:
   How do white people feel about it?
   How do colored people feel about it?

5. Do you think there are any people in this community who feel differently about this?

   If yes, probing:
   How do they feel about it?
   What kind of people are they? (General descriptive terms)
   Are they organized in any way?

What kinds of things do you think they would do to put across their viewpoint?

6. Now, suppose the local school board decided in the next few years that it had to let a few colored children who lived in a mostly white attendance area go to the nearest school. What do you think would happen?

Probing:

What would people in this community do?
Would anyone try to keep them from attending the school?

If so, who would they be? (*Not* by name—just a general description) What kinds of things would they do?
Who would be the leaders?
Who would participate?
Would the existing law enforcement staff of this community be able to prevent violence from occurring?
Under what conditions would they be able to prevent violence, and under what conditions would they not be able to?

7. Now, suppose that in the next few years a few colored persons in your county applied for admittance to a white school and a court ordered that they be admitted. What do you think would happen?

Probing:

What would people in this community do?
What would the school board do? (Admit them immediately? Try to fight the court order? Resign?)
If they decided to admit them, would anyone try to keep them from attending school?
(Continue as in question 6)

8. Suppose the local school board decided that it had to let all children go to the school nearest their home. What do you think would happen?

Probing: (Same as for question 6)

9. If segregation in the schools were done away with in the next few years, what problems do you think would come up?

Probing:

In the employment of white teachers?

In the employment of colored teachers?

In transportation of children to school?

In getting public support for school finance programs?

In keeping order among the children in the classroom and on the playground?

In getting parents, white and colored, to send their children to mixed schools?

In getting fair treatment by teachers of all children regardless of race?

In keeping high teaching standards in the schools?

10. What ways can you suggest for handling any of the problems you have mentioned?

11. Suppose public school segregation had to be ended sooner or later. What do you think would be the best way to do it?

Probing:

There just isn't any way?

Assign all children to school on the basis of geographical location immediately?

Keep present school boundaries at first and let children who want to do so go to the closest school?

Have a one or two year period of preparation before any steps are taken to end segregation?

Try to work it out over a period of years?

12. If it had to be done in the next few years, in what grades do you think it would be easiest to start admitting colored and white to the same schools?

13. Is there anything I haven't touched on in my questions which you would like to comment on?

Personnel Interviewed

A. *Leaders* (Officials)

County Commissioners, Chairman
Mayor or City Manager
Sheriff
Chief of Police

County Judge
County Solicitors
Superintendent of Schools
County Health Officer
County Board of Public Instruction, Chairman
County School Trustees, Chairman
County Commissioners
City Commissioners
Deputies
Police Officers
Circuit Judge
State Attorney
Judge, Court of Criminal Record
County Board of Public Instruction, Members
County School Trustees, Members

B. *Leaders* (Non-officials)

School principals
School supervisors
Teachers
PTA leaders
Women's Club leaders
Chamber of Commerce president
Civic and Veterans' organizations leaders
Newspaper editor or publisher
Bankers
Lawyers
Doctors
Realtors
Labor union leaders
Undertakers
Insurance men
Leading business men
Directors, housing projects
Other leaders designated by respondents as:

(1) Being in a position to know what people in the community are thinking and doing.

(2) Being important in influencing what people in the community think and do.

RELIABILITY OF JUDGMENTS IN THE ANALYSIS OF RECORDED INTERVIEWS ON THE SUBJECT OF THE SUPREME COURT'S SEGREGATION DECISION*

Eight trained social scientists—four Negro, four white—made the analysis of 657 interviews recorded on the subject of the Supreme Court decision declaring segregation unconstitutional. Each judge analyzed approximately 80, using a scale devised for the specific case at hand.

To indicate the reliability of ratings by the judges, two items were arbitrarily selected for analysis. The two items selected were thought to offer representative difficulties to the judges. The judges were paired—one white and one Negro—and each judge independently re-rated half of his partner's interviews on the two items.

The first item concerned a judgment of the personal feeling of the respondent on the following scale:

1. Firmly in favor of the decision, and believe that schools should be immediately opened to both races throughout Florida.

2. Firmly in favor of the decision and feel schools should be gradually combined, taking into consideration places which need more preparation.

3. Feel that such a decision should have been made eventually, but believe we are not ready for it. Feel we must move very slowly and cautiously.

4. Neither in favor of or against the decision; will agree with whatever the courts and school officials do.

5. Against the decision, but will agree with whatever the courts and school officials do.

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* Prepared by Fay-Tyler M. Norton, graduate psychologist.

6. Firmly against the decision; will not co erate in ending public school segregation.

7. Firmly against the decision; will actively oppose any attempt to end segregation in Florida schools.

8. Other; Pro-segregation

9. Other; anti-segregation

0. Don't know

x. No information

The second item concerned a judgement on the "general tone of the interview." The scale consisted of the following:

(1. Will oppose.
(2. It won't work.
(3. Indecisive.
(4. Can be worked out, but will take time.
(5. Integration can take place soon.

The plan for statistical analysis included percent of agreement between judges, Chi square, and the contingency coefficient for each of the eight sets of paired judgements.

For purposes of reporting and analysis, it was deemed more meaningful to combine categories in both items to form a directional scale. A preliminary check revealed that the categories were probably too finely drawn to be highly reliable as specific categories. In the first item, categories 1, 2, 3, and 9, and categories 5, 6, 7, 8, were used to indicate "in favor" or "against" the decision, respectively. In the second item, categories 1 and 2, and categories 4 and 5 were used to indicate "unfavorable" and "favorable", respectively. There were no interviews rated as 0 or x.

Table 1 shows (1) the percent of agreement between the pairs of judges on both items and (2) the total number of paired judgments made by each pair. The consistency of the judges is evident.* It is especially important that con-

*Note that the probability for agreement on only *one* interview is 1/9.

sistency of judgment was found between white and Negro judges.

Tables 2-5 indicate the ratings given the personal attitude of the interviewees by the four pairs of judges.

Each of the extremely high values of Chi square would occur much less than .001 times by chance alone. Inspection of the tables will show the positive relationship of the judges' ratings. The contingency coefficients indicate the degree of association.

Tables 6-9 indicate the classifications of the interviews according to "general tone." Here again each of the extremely high values of Chi square would occur much less than .001 times by chance alone. The relationship of the judges' classifications is also a positive one, the contingency coefficients indicating the degree of association.

Note must be made of violation of an assumption basic to the use of the Chi square statistic. Several of the theoretical cell frequencies in each table are less than 5. In this case the violation is not as serious as it might be, because the values of Chi square are extremely high. Reference is made to the article on the Chi-square test by Lewis and Burke.[1]

The four independent indicators of reliability for each of these items are acceptably high. The extension of acceptable reliability to other items of the interview analysis must be made on logical grounds alone.

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1. Lewis, Don, and Burke, C. J. The use and mis-use of the Chi-square test. *Psychol. Bull.*, 1949, 46, 433-489.

TABLE 1

PER CENT AGREEMENT BETWEEN JUDGES

I. RATINGS OF INTERVIEWEE FEELING

Judges*	Per Cent	Total No.
I & II	94	89
III &IV	93	86
V & VI	92	60
VII & VIII	89	82

II. RATINGS OF INTERVIEWS AS A WHOLE

Judges*	Per Cent	Total No.
I & II	85	85
III & IV	80	84
V & VI	66	61
VII & VIII	80	80

*Judges I, III, V, VII—Negro
Judges II, IV, VI, VIII—White

SUMMARY SHEET OF ATTORNEY GENERAL'S QUESTIONNAIRE, JULY 15 1954

County	Non-white Registrations reported by Secretary of State	Non-white Registrations reported by County Supt. of Registration	1954, 1st Primary Negro vote as estimated by County Supt. of Registration	1954, 2nd Primary Negro vote as estimated by County Supt. of Registration	Non-white Population 1950
Alachua	2,740	2,726	817	914	16,551
Baker	184	187	164	148	1,546
Bay	2,414	2,396	1,026	1,071	7,165
Bradford	684	636	367	413	2,800
Brevard	1,780	1,780	?	?	6,001
Broward	4,337	4,348	1,839	1,656	21,359
Calhoun	136	147	62	58	1,119
Charlotte	237	239	140	119	672
Citrus	486	486	283	248	1,555
Clay	946	968	796	742	2,105
Collier	526	526	319	306	1,986
Columbia	956	986	496	378	6,124
Dade	20,179	20,108	?	?	65,392
DeSoto	739	739	272	345	2,002

SUMMARY SHEET OF ATTORNEY GENERAL'S QUESTIONNAIRE, JULY 15, 1954 (Continued)

County	Non-white Registrations reported by Secretary of State	Non-white Registrations reported by County Supt. of Registration	1954, 1st Primary Negro vote as estimated by County Supt. of Registration	1954, 2nd Primary Negro vote as estimated by County Supt. of Registration	Non-white Population 1950
Hillsborough	4,003	4,003	2,400	2,800	38,315
Holmes	145	127	49	58	609
Indian River	289	289	112	153	2,962
Jackson	2,310	2,313	1,375	1,375	11,574
Jefferson	141	225	125	75	6.513
Lafayette	0	0	0	0	325
Lake	1,404	1,404	350	200	8,542
Lee	1,430	1,475	313	216	4,694
Leon	4,150	4,013	2,840	2,459	20,381
Levy	358	358	119	119	3,603
Liberty	0	0	0	0	581
Madison	586	585	?	?	6,477
Manatee	1,290	1,250	500	400	7,916
Marion	4,040	4,043	1,474	1,581	14,594

TABLE 2

FREQUENCIES OF RATINGS OF INTERVIEWEE FEELING BY JUDGES I & II

		Judge I			
		In favor of Supreme Court decision	Neutral	Against the Supreme Court decision	Total No. of cases
Judge II	In favor of Supreme Court decision	37	1	2	
	Neutral	0	5	0	
	Against the Supreme Court decision	1	1	42	
	Total No. of cases				89

Chi square=75.9711; P less than .00[illegible]

C=.68

TABLE 4

FREQUENCIES OF RATINGS OF INTERVIEWEE FEELING BY JUDGES V & VI

		Judge V			
		In favor of Supreme Court decision	Neutral	Against the Supreme Court decision	Total No. of cases
Judge VI	In favor of Supreme Court decision	17	0	1	
	Neutral	1	1	2	
	Against the Supreme Court decision	1	0	37	
	Total No. of cases				60

Chi square=44.436; P less than .001
C=.65

TABLE 6

FREQUENCIES OF CLASSIFICATION OF INTERVIEWS BY JUDGES I & II

		Judge I			
		Unfavorable	Neutral	Favorable	Total No. of cases
Judge II	Unfavorable	24	1	6	
	Neutral	0	0	1	
	Favorable	4	1	48	
	Total No. of cases				85

Chi square=51.067; P less than .001

C=.61

TABLE 8

FREQUENCIES OF CLASSIFICATION OF INTERVIEWS BY JUDGES V & VI

		Judge V			
		Unfavorable	Neutral	Favorable	Total No. of cases
Judge VI	Unfavorable	24	1	3	
	Neutral	4	0	7	
	Favorable	0	1	16	
	Total No. of cases				61

Chi square=21.395; P less than .001

C=.41

Analysis of Negro Registration and Voting in Florida 1940-1954*

This is a study of the trend of Negro registration for voting for the years 1940-1954, an example of the way Negroes have begun to take advantage of a privilege from which State restrictions were removed by a federal court decision.

The reliability of figures on registrations is questionable. In many instances supervisors have failed to keep accurate and up-to-date records, and in several instances the report made to the Secretary of State differs from that made to the Attorney General. It is impossible to compare the percent of negroes over 21 registered with the percent of whites over 21 registered; many counties report more white registrants than there are adults over 21 according to the 1950 census.

Immediately evident from graphs of the number of Negroes registered is the tremendous increase in registration following 1944 when the decision in Smith v. Allwright (321 U.S. 649) was made applicable to Florida through further litigation.

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*Prepared by Dr. Malcolm B. Parsons and Dr. J. A. Norton, School of Public Administration, Florida State University.

Evident from a county-by-county report is the great variation among counties in the percentage of non-whites over 21 who are registered.

There is also a variation in the time when Negro registrants increased. The following table shows the time pattern for counties with no Negroes registered.

Number of Counties with No Negro Registrants

1940—51
1944—36
1946— 4—Madison, Liberty, Lafayette, Union, Hendry (2)
1948— 4—Madison, Liberty, Lafayette, Union (1), Hendry
1950— 5—Madison, Liberty, Lafayette, Union, Calhoun
1952— 4—Madison, Liberty, Lafayette, Union
1954— 3—Liberty, Lafayette, Union

The counties which have had no Negroes registered since 1946 have all been in north Florida, except for Hendry which left this group in 1950.

Madison county is a good example both of how rapidly situations can change and the techniques necessary to produce a change. Madison County had no Negro registrants until just before the 1954 primaries. At this time 586 Negroes went to the courthouse *en masse* and were registered. According to the supervisor of registration most of the registrants exercised their franchise.

In 1952, the counties in North Central Florida (the plantation-South culture) showed a generally uniform pattern of a low percentage of Negro registrants. All 4 counties with no Negroes registered are in this bloc.

Very interesting are the Florida counties, especially in North Florida, showing a high percentage of Negroes registered. These reports would bear close examination in light of participation reports and other studies. Where urban machines are known to operate the pattern is not surprising. In other counties the explanations do not come easily.

Graphs showing absolute numbers of Negro registrants from 1940 through 1954, and the percent of adult Negroes registered for those years, are attached for each of the 12 counties under interview scrutiny.

"We don't mind for our niggers to register, but we don't let 'em vote", a north Florida official is quoted as saying. The questionnaire sent to supervisors furnishes the only information on the number of Negroes who actually vote. Many of these figures were plainly labelled "estimates", others probably are.

Many reports must be interpreted in one of two ways:

(1) They are either poor guesses, or

(2) Any Negro who dares register is determined to exercise his right to vote.

This evaluation is made because the percentage of registered Negroes who vote is much higher than one would estimate on the basis of the social-economic levels which correlate with voting interest. The evaluation applies with somewhat less force to the counties under interview scrutiny, but it is not clear why.

TABLE 3

FREQUENCIES OF RATINGS OF INTERVIEWEE FEELING BY JUDGES III & IV

		Judge III			
		In favor of Supreme Court decision	Neutral	Against the Supreme Court decision	Total No. of cases
Judge IV	In favor of Supreme Court decision	50	0	1	
	Neutral	1	0	1	
	Against the Supreme Court decision	2	1	30	
	Total No. of cases				86

Chi square=79.368; P less than .001

C=.69

TABLE 5

FREQUENCIES OF RATINGS OF INTERVIEWEE FEELING BY JUDGES VII & VIII

		Judge VII			
		In favor of Supreme Court decision	Neutral	Against the Supreme Court decision	Total No. of cases
Judge VIII	In favor of Supreme Court decision	55	1	7	
	Neutral	0	1	0	
	Against the Supreme Court decision	1	0	17	
	Total No. of cases				82

Chi square=50.5192; P less than .001

C=.62

TABLE 7

FREQUENCIES OF CLASSIFICATION OF INTERVIEWS BY JUDGES III & IV

		Judge III			
		Unfavorable	Neutral	Favorable	Total No. of cases
Judge IV	Unfavorable	16	1	3	
	Neutral	4	1	4	
	Favorable	2	3	50	
	Total No. of cases				84

Chi square=48.511; P less than .001

C=.50

TABLE 9

FREQUENCIES OF CLASSIFICATION OF INTERVIEWS BY JUDGES VII & VIII

		Judge VII			
		Unfavorable	Neutral	Favorable	Total No. of cases
Judge VIII	Unfavorable	3	0	0	
	Neutral	5	3	3	
	Favorable	7	1	58	
	Total No. of cases				80

Chi square=25.4613; P less than .001

C=.47

SUMMARY SHEET OF ATTORNEY GENERAL'S QUESTIONNAIRE, JULY 15, 1954 (Continued)

County	Non-white Registrations reported by Secretary of State	Non-white Registrations reported by County Supt. of Registration	1954, 1st Primary Negro vote as estimated by County Supt. of Registration	1954, 2nd Primary Negro vote as estimated by County Supt. of Registration	Non-white Population 1950
Dixie	91	91	85	85	562
Duval	25,774	25,817	11,876	10,585	81,840
Escambia	6,545	6,553	1,834	2,096	25,123
Flagler	4	4	2	0	1,534
Franklin	309	309	244	193	1,496
Gadsden	8	8	3	?	20,468
Gilchrist	10	10	4	4	346
Glades	342	247	107	118	898
Gulf	426	414	284	226	2,007
Hamilton	212	238	150	100	3,790
Hardee	282	282	155	157	750
Hendry	550	551	300	237	1,580
Hernando	420	420	252	252	1,539
Highlands	1,276	1,270	557	613	3,466

SUMMARY SHEET OF ATTORNEY GENERAL'S QUESTIONNAIRE, JULY 15, 1954 (Continued)

County	Non-white Registrations reported by Secretary of State	Non-white Registrations reported by County Supt. of Registration	1954, 1st Primary Negro vote as estimated by County Supt. of Registration	1954, 2nd Primary Negro vote as estimated by County Supt. of Registration	Non-white Population 1950
Martin	516	516	345	310	2,203
Monroe	1,214	1,214	925	596	3,221
Nassau	1,032				4,007
Okaloosa	363	375	187	185	2,198
Okeechobee	291				641
Orange	2,687	2,695	1,139	787	22,766
Osceola	239	239	171	150	1,492
Palm Beach	5,198	5,179	2,043	2,244	34,797
Pasco	633	700	100	75	2,776
Pinellas	3,408	3,426	939	975	18,712
Polk	3,685	3,716	?	?	25,577
Putnam	1,433	1,433	409	536	8,608
St. Johns	2,515	2,515	785	618	8,327
St. Lucie	1,464	1,476	545	566	6,394

SUMMARY SHEET OF ATTORNEY GENERAL'S QUESTIONNAIRE, JULY 15, 1954 (Continued)

County	Non-white Registrations reported by Secretary of State	Non-white Registrations reported by County Supt. of Registration	1954, 1st Primary Negro vote as estimated by County Supt. of Registration	1954, 2nd Primary Negro vote as estimated by County Supt. of Registration	Non-white Population 1950
Santa Rosa	613	613	547	511	1,584
Sarasota	707	639	132	164	4,611
Seminole	1,581	1,624	978	993	11,940
Sumter	520	619	464	464	3,052
Suwannee	438				4,985
Taylor	99	109	0	0	3,181
Union	0	0	0	0	3,231
Volusia	4,537	4,637	2,376	2,358	16,385
Wakulla	139	145	15	22	1,627
Walton	1,721				1,958
Washington	570	581	340	325	2,119

Existing Public School Facilities in Florida ...and Factors of School Administration and Instructional Services Affecting Segregation*

The 1950 census revealed that Florida had grown in population since 1940 more than any state east of the Rocky Mountains. This rapid growth has probably been most sharply observable in the public schools. The present rate of growth in school population from year to year is about 8 per cent. Present school population for the year ended June 30, 1954 was 650,285 (507,276 white; 143,009 Negro) up from 603,665 the year before (467,762 white; 135,903 Negro).

There were 81 schools in 18 counties forced to run double sessions during 1953-54 as against 66 schools in 15 counties the year previous.

The classroom situation is acute. Although 671 classrooms were constructed between July 1, 1953 and July 1,

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*Prepared by Dr. Robert E. Lee, Florida State Department of Education, assisted by Thomas N. Morgan, Florida State Department of Education.

1954, bringing existing classrooms up to about 18,000, it would require 5000 new classrooms this year to eliminate double sessions, relieve congested classrooms, take care of expanding enrollment and replace obsolete classrooms which should be abandoned.

The need for teachers is equally critical. Conservative estimates place the teacher need for the year 1953-54 at a figure between 4500 and 5000.

During 1953-54 Florida's 2212 school buses manned by 2038 drivers (including 359 Negro drivers) traveled 30,910,944 miles to transport 209,492 pupils at a cost of $4,506,667. The magnitude of this operation can be more readily appreciated by comparing it with that of commercial bus passenger lines which reveals that in miles traveled school buses probably equaled or exceeded the total mileage of all commercial passenger bus lines in the state in the latest recorded corresponding year.

The total cost of operating Florida's public schools for the year 1952-53 is given in Table 1, classified by major items of expenditure.

The level of support of public education in Florida underwent a substantial advance with the establishment of the 1947 Minimum Foundation Program Law. Prior to that year, the assessed value of property within a county was the primary determinant of financial support; since then the extensive tax resources of the entire state have made possible adequate financial support for the education of all the children, regardless of location or color. This structure of school finance can be described as a partnership between each county and the state, whereby the county levies taxes according to its financial ability and the state contributes to each county primarily on the basis of need. Since 1947 the gaps of inequality between the races and between rural and metropolitan areas have been steadily narrowed.

Table 2 shows that the pronounced discrepancies between white and Negro salaries existing in 1930 and 1940 were reduced to a difference of 21% in 1947 and only 7.0% in 1952-53. In like manner the percentage of discrepancy between Current Expenditure Per Negro Pupil and Current Expenditure Per White Pupil in 1930-31 was 71%, but by 1952-53 this per pupil dollar expenditure for Negroes had risen almost tenfold to where the per cent difference was only 16% less than the corresponding expenditure for whites.

During the fourth and fifth decade, the majority of Negro teachers had less than four years college training. By 1952-53, 94.7% of all Negro teachers compared to 95.6% of all white teachers had at least four years college training.

Capital Outlay Expenditures have reflected not only the inflation of enrollment, but the inflation of new residents and the inflation of construction costs. From 1937 to 1953 Capital Outlay Expenditure for Negroes amounted to $28,975,000, and for white schools the amount was $129,-246,000. The total value of public school property in Florida has been estimated at $300,000,000. Capital Outlay Expenditures Per Negro Pupil were greater than for whites in 1952-53 because of greater needs. During the two decades up to 1947 a limited State Aid Program provided some financial support without specification as to race. Starting in 1947, State Aid under the Minimum Foundation Program was allocated to the counties in such a way that no shifting of salary funds from one race to another could take place. In some counties of Florida, the Expenditures Per Negro Pupil are greater than the Expenditures Per White Pupil. This often happens when the Negro teachers as a group have either greater training or longer service than the white teachers.

Florida provides annually $400 per instruction unit for

Capital Outlay needs which for the 67 counties totaled $9,451,600 in 1953-54 and has been computed at $10,199,448 for the 1954-55 estimate. This money is spent in each county according to the needs recommended by a state conducted school building survey. With the help of these individual county surveys it was estimated as of January, 1954 that $97,000,000 will be needed to provide facilities for white children and $50,000,000 will be needed to provide facilities for Negro children. Since the activation as of the effective date January 1, 1953 of a Constitutional Amendment providing for the issuance of revenue certificates by the State Board of Education against anticipated state Capital Outlay funds for the next thirty years more than $43,000,000 in state guaranteed bonds have been issued to provide additional facilities for both races. By the fall of 1954 there will have been a total of $70,000,000 of these bonds issued and in the foreseeable future the total will be $90,000,000 to $100,000,000. At the present time 2182 classrooms are under construction as a result of the issuance of these bonds.

The growth of Florida's school population in the past five years has far exceeded all expectations and predictions. The combination of a large birth rate during the latter forties and a steadily increasing migration rate is reflected in Table 3.

It is significant that Florida was the only one of the thirteen southern states to show an increase in the age 10-14 Negro population during the last decade. While the general pattern in the South during 1940-50 was a migration of Negroes to the North and West, Florida registered a 2.5% net migration increase and a natural increase of 14.9%. The corresponding rate for the white population for this decade was a net migration increase of 40.6% and a natural increase of 16.1%. It is clear then, that Florida's Negro population, though increasing in both measures, is actually becoming a smaller and smaller minority. The per cent of

non-white population decreased from 27.2% in 1940 to 21.8% in 1950. As in the other states, a wide range of concentration is found among the 67 counties of Florida. The accompanying two maps of Florida counties show the amount and per cent of non-white population in 1950 and the distribution of Negro enrollment in 1952-53, and illustrate the diversity of Florida's pattern. In only two counties of North and West Florida do the Negroes outnumber the whites. In only one county do the Negroes comprise less than 5% of the county's population. With the exception of Jacksonville, the major metropolitan areas are inhabited by a much smaller proportion of Negroes than the state average.[1]

The shifting of Negro population into the southern coastal counties and into Northeast Florida is contrasted with the out-migration of Negroes from the West Florida non-urban counties. Statewide, twenty-seven counties (or 40%) registered actual losses in Negro population from 1940 to 1950; and the heaviest losers were Dixie (82%), Gilchrist (46%), and Liberty (37%).

Achievement Test Scores

If a significant difference in preparation and achievement level exists between white and Negro students, additional academic problems can be expected in the process of desegregation. It is not inferred that these differences are explained by racial differences.

In Florida, the statutes provide 1,050 scholarships of $400 each for students desiring to train for the teaching profession. Awarding of the scholarships is done on a basis

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1. Dietrich, T. Stanton, Statistical Atlas. Florida's Population: 1940 and 1950: Research Report No. 3. Fla. State University, June, 1954.

of county representation, race, and competitive test scores of psychological and scholastic aptitude. A compilation of the scores of the 740 white twelfth grade applicants in the spring of 1954 yielded an average score of 340. Compilation of the 488 Negro twelfth grade applicants yielded an average score of 237. In the previous year, 1953, 664 white applicants made a mean score of 342 while the 503 Negro applicants made an average score of 237. This difference is classified as very significant and should be interpreted as meaning that factors other than chance explain the different results between white and Negro scores.

In addition, a comparison of the performance of white and Negro high school seniors on a uniform placement-test battery given each spring in the high schools throughout the State of Florida is shown in Table 4. The number of participants corresponds with the total twelfth grade membership during the five-year period, 1949-1953. This table shows, for example, that on all five tests 59% of the Negroes rank no higher than the lowest 10% of the whites. On the general ability scale, the fifty percentile or mid-point on the white scale corresponds with the ninety-five percentile of the Negro scale. In other words, only 5% of the Negroes are above the mid-point of the white general ability level.

Studies of grades at the University of Florida indicate that white high school seniors with placement test percentile ranks below fifty have less than a 50% likelihood of making satisfactory grades in college. While factors such as size of high school, adequacy of materials, economic level, and home environment are recognized as being contributing factors, no attempt is made here to analyze or measure the controlling factors.

Counties With No Negro High Schools

An examination of facilities provided by the sixty-seven counties reveals that no senior high schooling was offered for Negroes in eight counties in 1953. Transportation to an adjacent county high school is provided in each county. In six of these eight counties the membership available for a 7-12 grade high school is less than seventy-five.

Table 5 shows the estimated number of Negroes eligible for grades 7-12, the number and organization of white high schools, the white average daily membership, the full capacity of the high schools, and the possible space available. If the ban on Negro pupils were lifted, space would be available in six of these eight counties.

Examples of Inter-Racial Cooperation

The tradition of separate schools for Negro children has in effect separated the Negro teachers from association with white teachers. Until recent years, duplicate meetings of teachers during pre-school conferences were held in every county. When specialists and consultants were brought into the county to improve instruction, two presentations instead of one had to be made. Considering the growing demands for efficiency and effective administration that were promulgated by the 1947 Minimum Foundation Program, the administrations in several counties have found it advantageous to schedule a single program of activities during the two week pre-school conference period for instruction personnel. Collier, Monroe, Sarasota, Hardee, and Dixie are counties that have already combined the races for pre-school conferences. This action, it might be noted, has been carried out as a result of voluntary local level initiative without any directive or suggestion from the state administration.

There are other examples of inter-racial cooperation at the county level. In Dade and Duval Counties, Negro supervisory personnel have offices in the same building as their fellow professional staff members. In a number of counties, including Santa Rosa, Leon, Sarasota, Pinellas, Hillsborough, and Hernando, regular principals' meetings are held without regard to race. Negro representatives have participated in the County PTA Council in Hillsborough County. In many counties the development of a Parent Teacher Association in Negro schools has been possible as a result of the personal interest and sponsorship of white PTA leaders. Invitations to be guests and speakers at PTA meetings have not been entirely unilateral.

The State Department of Education has Negro consultants, and staff and division meetings are held at regular intervals in the Capitol with no distinction as to race.

The members of the Florida Resource Use Education Committee are appointed by the Governor and include both races. The purpose of the committee is to promote instruction in the wide use and development of the natural resources in our community, state, and nation.

The Florida Council on Elementary Education and the Florida Council on Secondary Education are each composed of professional educators in Florida and have representation from both races. Membership is by appointment of the State Superintendent of Public Instruction and the purpose of each Council is to conduct studies which will make possible the continued improvement of the school's product.

For the past two years, a week-long Negro Principal's Work Conference has taken place at Bethune-Cookman College with a participation of more than half of all Negro Principals. Speakers, consultants, and specialists were largely drawn from white educators in Florida.

The examples of normal association between the races

cited herewith are confined largely to professional educators and those citizens deeply concerned about public education.

TABLE 1

SUMMARY OF EXPENDITURES—ALL FUNDS—BOTH RACES, 1952-53

General Control	$ 2,367,825.41
Instruction	78,233,563.93
Operation of Plant	6,540,853.16
Maintenance	4,031,471.75
Auxiliary Agencies	6,585,529.70
Fixed Charges	2,810,762.18
Current Expenses (Day Schools)	100,570,006.13
Other Schools	1,527,768.39
Total Current Expenses (All Schools)	102,097,774.52
Capital Outlay	28,013,835.59
Debt Service	8,783,513.04
Total Expenditures (All Funds)	$138,895,123.15

TABLE 2

SIGNIFICANT TRENDS IN THE GROWTH OF FLORIDA SCHOOLS UNDER DUAL SYSTEM OF EDUCATION 1930 TO 1953

	1930-31	1940-41	1947-48	1952-53
Average Daily Attendance:				
White	203,002	240,388	272,084	380,800
Negro	74,785	87,570	96,503	118,162
Average Annual Salary:				
White	$907	$1,202	$2,770	$3,457
Negro	403	605	2,191	3,215
Teacher Preparation (Per Cent Four Years or More):				
White	38.81%	61.48%	76.72%	95.62%
Negro	15.18	31.90	62.53	94.74
Current Expenses Per Pupil in ADA (All Funds):				
White	$61.26	$72.40	$175.14	$209.42
Negro	17.91	28.80	110.39	176.24
Capital Outlay Per Pupil in ADA (All Funds):				
White	$3.12	$7.36	$42.60	$54.92
Negro	0.35	0.57	10.65	60.09
State Aid Per Pupil in ADA:				
Both Races	$15.28	$39.60	$106.70	$123.39

TABLE 3

ENROLLMENT

(Includes Kindergarten and Junior Colleges)

Year	White	Negro	Total
1953-54	507,276	143,009	650,285
1952-53	467,762	135,903	603,665
1951-52	428,405	129,695	558,100
1950-51	401,083	126,091	527,174
1949-50	375,295	120,368	495,663

The over-all rate of growth during the past two years has been more than 8%; (9% for white pupils; 5% for Negro pupils.)

TABLE 4

COMPARISON OF PERCENTILE RANKS FOR WHITE AND NEGRO EXAMINEES IN THE FLORIDA STATEWIDE TWELFTH-GRADE TESTING PROGRAM SPRING 1949 THROUGH SPRING 1953

White Percentile Rank	Corresponding Percentile Rank for Negroes					
	Psychological (General Ability)	English	Social Studies	Natural Science	Mathematics	All Five Tests
01	31.4	18.8	15.6	11.2	09.8	17.36
05	57.4	50.4	44.8	32.4	33.0	43.60
10	70.8	67.4	60.4	50.0	46.8	59.08
20	82.8	81.6	78.4	69.8	67.2	75.96
30	88.6	88.6	86.4	80.2	79.2	84.60
40	92.6	93.0	91.4	87.8	86.2	90.20
50	95.4	95.6	94.4	92.4	90.6	93.68
60	97.2	97.0	96.4	95.0	94.4	96.00
70	98.2	98.0	97.6	97.0	96.4	97.44
80	98.75	99.0	98.6	98.4	97.25	98.40
90	99.0		99.0	98.5	98.5	98.75
95				99.0	99.0	99.0

Number of Seniors Tested: White—69,909
Negro—10,675

TABLE 5

COUNTIES WITH NO NEGRO HIGH SCHOOL — 1952-53

County	NEGRO		WHITE			
	Elem. ADM (1-6)	Est. 7-12 ADM Based on Ratio of .50	No. and Grade of Hi School	ADM (7-12)	Capacity	Space Available
1. Baker	288	144	3(1-12)	499	660[1]	161
2. Charlotte	70	35	1(1-12)	234	300[1]	66
3. Dixie	68	34	1(7-12)	300	330[2]	30
4. Glades	102	51	1(1-12)	119	180	61
5. Hardee	136	68	1(9-12)	803	890	87
6. Holmes	104	52	4(1-12)	1222	1080	....
7. Lafayette	42	21	1(7-12)	283	330[1]	47
8. Union Co. Hi.	230	115	1(1-12)	255	280	25

1. Allows 60 additional capacity for Homemaking, Science, Agriculture, and Physical Education facilities.
2. Allows 90 additional capacity for Agriculture, Science, Homemaking and Gymnasium facilities.

TABLE 6

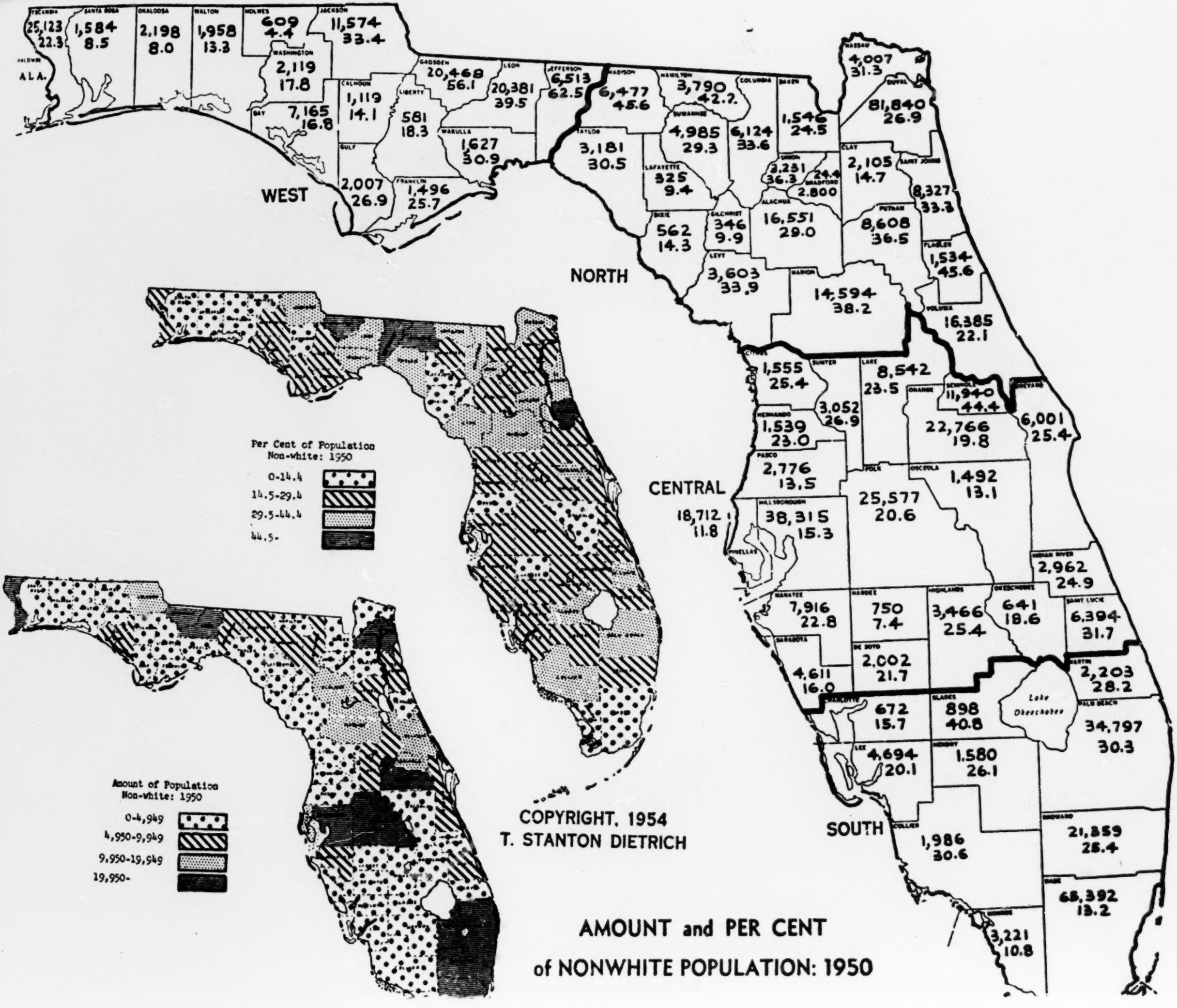
STATUS OF ELEMENTARY PRINCIPALS* 1953-54

(Percentage)

	Male		Female	
	W	N	W	N
Training				
Rank I	9.60		6.19	
Rank II	68.80	46.15	55.75	46.90
Rank III	20.00	51.30	36.28	53.12
No Information	1.60	2.60	1.76	
Number	125	39	226	32
Years as Principal				
0	1.60		.90	
1 - 5	45.60	30.80	31.85	25.00
6 -10	17.60	33.33	22.12	21.90
11-15	12.80	15.40	16.81	18.80
16-20	8.00	15.40	8.84	15.62
21-25	4.80	2.60	8.84	3.12
26-Over	9.60	2.60	9.73	15.62
No Information			.90	
Number	125	39	226	32
Salary 10 Months (Dollars)				
2500-2999	1.60	2.60		
3000-3499	.80	17.94	1.32	
3500-3999	9.60	17.94	3.53	12.50
4000-4499	19.20	15.40	18.60	18.80
4500-4999	12.80	10.25	22.12	25.00
5000-5499	20.80	17.94	28.80	12.50
5500-5999	16.80	10.25	11.06	12.50
*Not Applicable (12 mos.)	16.80	5.12	10.61	18.80
No Information	1.60	2.60	4.00	
Number	125	39	226	32

*Compiled by Sara DeKeni, School of Education, Florida State University.

AMOUNT and PER CENT of NONWHITE POPULATION: 1950



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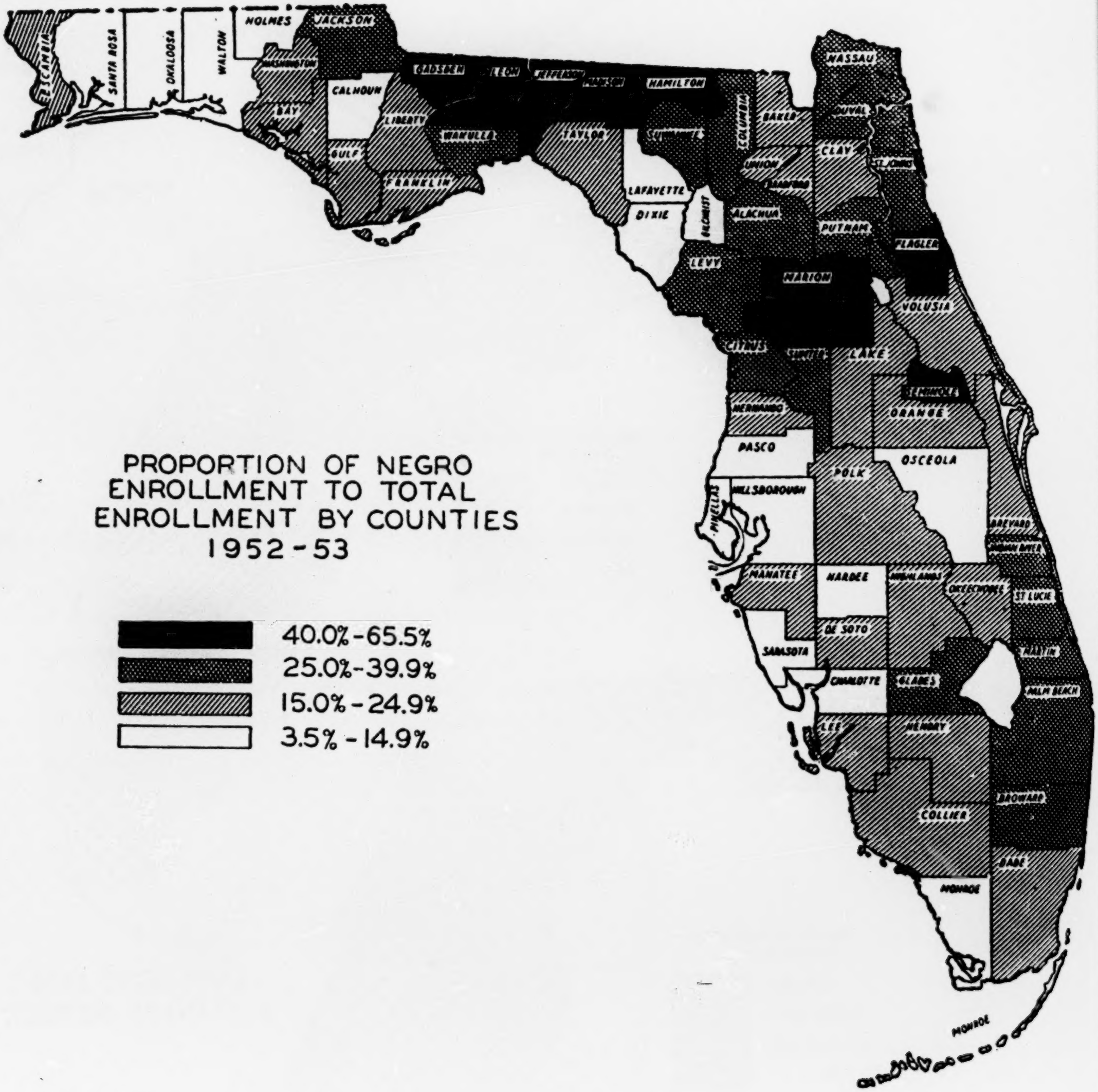

PROPORTION OF NEGRO ENROLLMENT TO TOTAL ENROLLMENT BY COUNTIES 1952-53

	40.0% - 65.5%
	25.0% - 39.9%
	15.0% - 24.9%
	3.5% - 14.9%

An Intensive Study in Dade County and Nearby Agricultural Areas ...and Conclusions*

GENERAL CONCLUSIONS

A majority of those polled believed that most of the white population of Dade County are opposed to the Court's decision as a matter of principle. There seems to be reason to believe, however, because of the relative lack of discussion about the decision and its attendant problems and of the calm acceptance of the decision itself that the attitude on the part of many is not a deep-seated, emotionally formed one. If the process of integration is handled gradually (after a few years of preparation) and wisely and with firm leadership, a very large majority of this group will abide by the decision. The distinct possibility remains that many of this group with loosely formed convictions can be driven into active opposition by early and abrupt transition.

Some reluctance has been noted on the part of the School Board and other public officials to plan and lead, and on the

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* Prepared by Dr. D. R. Larson, Dr. Edward Sofen, and Dr. T. J. Wood, Government Department, University of Miami.

part of the newspapers to encourage the same. The problem of obtaining leadership outside official circles for the transitional steps will be made more difficult by the tendency or perhaps organized campaign of the more violent pro-segregationists to identify such leadership with the Communist Party. On the other hand, a number of ministers have indicated that they will advise their congregations to follow the Court's decision.

Virtually complete agreement exists among those polled as to the most explosive area—the northwest section of the county which is low in the white socio-economic strata and which contains the greatest percentage of southern-born whites. The elected officials foresaw the next greatest amount of trouble (although not violent in nature) from those communities such as Coral Gables and Miami Shores which are high on the socio-economic scale. Community leaders, the teachers, newsmen, police and labor leaders failed to mention this in any significant numbers; this failure may be explained in part by disposition to think of difficulties only in terms of violence.

Almost all elected officials, journalists, police chiefs and labor leaders agreed that serious violence in several areas was inevitable if large-scale integration were to be attempted within the next year or two; such violence would be perpetrated by a small segment of the population and would take the form of the bombing of homes, hit-and-run shooting and individual beatings rather than lynchings and other more openly organized activities. Among the community leaders there was less unanimity, although a majority expects violence in some form in the most difficult areas.

Roughly half of the above categories of interviewees believed that some scattered violence was inevitable no matter how slowly the integration was accomplished. Only

33% of the teachers expect violence under such circumstances.

These same categories thought that boycotts in all parts of the County were inevitable whenever integration was undertaken but few estimates were made of their dimensions. A substantial move toward private schools among the well-to-do was agreed upon. There was a marked absence of mention of the Byrnes-Talmadge Plan of removing the state's direct connection with education; only a few of those who expressed personal opposition to the decision thought that this was a practical solution.

The consensus of the various categories of whites polled with regard to the attitude of the Negro population on the timing of integration is that a gradual approach over a period of several years is desired. Although Negro school teachers are not a representative cross-section of the Negro population, it should be noted that by an extremely large majority they wanted speedier integration and that they reported, although by a smaller majority, that their students agreed.

The small sampling of Negro leaders indicates that most of the hitherto effective Negro leaders are prepared not to demand, by means of suits or otherwise, immediate action if there is indication on the part of the state and local officials that they are planning in good faith and with reasonable promptitude the method of implementation decreed by the Supreme Court.

Although no such specific question was posed, significant numbers in all categories minimized the difficulties that might arise among the younger children; but it was recognized that violent parental attitudes might change the situation radically. At the same time the belief was widely expressed that social activities in junior and senior high schools would give rise to considerably more trouble, if

not among the students, then certainly among the parents. Any consideration of a scheme to initiate integration in the first grade would be forced to take into account the fact that among the white teachers polled the first grade teachers were most resistant to the idea of integration.

The two special agricultural areas checked must be considered a problem of an entirely different order owing to the high concentration of Negroes, the Negroes' low socio-economic status, and the relative absence of whites drawn from northern metropolitan areas. The feeling against the Negro, particularly in one of these areas is more intense and more structured than that in the Greater Miami area.

Factors Indicating a Gradual Approach as the Solution to this Problem

1. Despite the fact that a majority of the white population of Dade County is opposed to the Court decision as a matter of principle, they nevertheless indicate that they will abide by the decision if integration is handled gradually, with an adequate period of preparation.

2. The present reluctance to assume positive leadership on the part of public officials and of any substantial number of groups outside official circles indicates great difficulty if an attempt is made to move too quickly.

3. A general belief exists that serious violence will occur if the decision is pushed by any minority group, white or colored.

4. A similar belief that some violence is inevitable no matter how gradual the transition, but with a firm belief that the more gradual the transition the more moderate and less frequent would be the outbreaks of violence.

5. In spite of some interracial activity among school personnel, it is a fact that Negro and white teachers have

never met together in Dade County—not even for "Fellowship Day." Interracial cooperation through joint activity would seem to be a must before school integration could be put into operation.

6. Many leaders interviewed agreed that if the NAACP, or any other organized groups, should seek to push the decision by test cases this fall immeasurable harm would be done to the entire cause of the integration of the schools.

7. With a majority of white population disagreeing with the Supreme Court's decision in principle, a state legislator was, without question, correct when he said that what is needed is a "mental change" in the community. Such changes obviously require time.

8. A small minority in the Negro community, without question, opposes integration in the schools. Others who strongly favor the decision in principle are concerned about the practical problems of the decision as it affects Negroes. A gradual solution would thus ease the tension experienced by both these groups of Negroes.

9. A sizeable percentage of the Negro leadership group checked stated that they believe a gradual approach is best. They would accept this gradual approach as long as the white community acts in good faith and with reasonable speed toward a solution.

10. Research indicates that in the two special South Florida agricultural areas checked the problems of community acceptance and general leadership make the problem of integration even more difficult than in the metropolitan area, and thus these two sections must be granted an opportunity to proceed more slowly and perhaps in an entirely different manner.

11. The greatest difficulty in integration would probably be caused at the junior and senior high school levels due to

social activities and athletic and other extracurricular events. Time allowed for preparation for integration would permit the gradual use of non-social, extracurricular activities as a way of preparing students for eventual school integration.

12. Up to 60% of the white teachers polled favored a long transitional period, and another 20-30% favor at least a one or two year period of adjustment.

13. The School Board and top school administrative personnel in the school system have given little attention to the problems raised by the decision and would require time to simply handle the mechanical problems involved in the transition. It would also give these groups time to develop positive leadership which will be required for a peaceful and smooth transition.

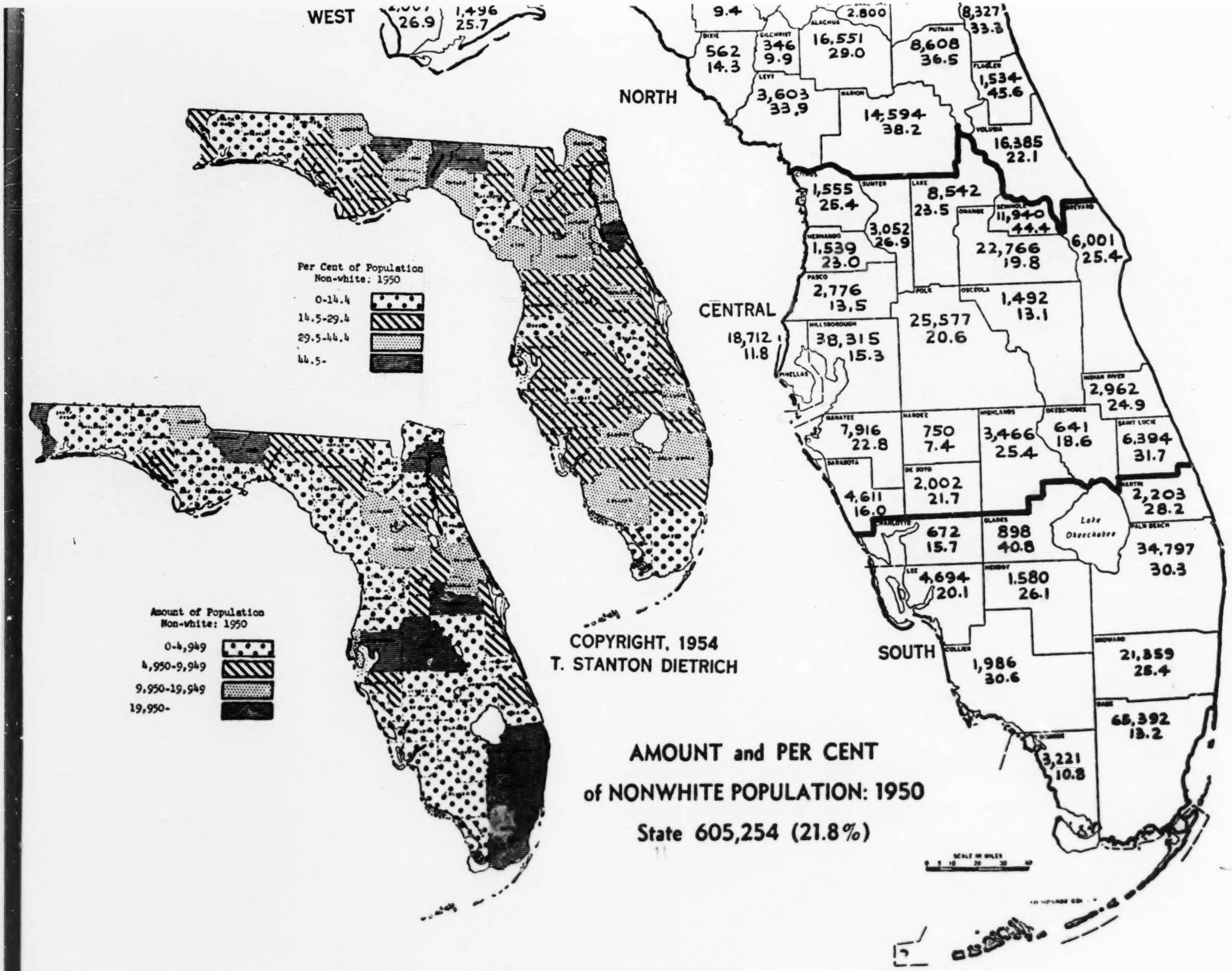
14. The need for careful preparation in the process of integration was urged again and again by all groups polled. It is agreed that leadership and proper educational preparation will be all-important in a transition of this nature. Both require time for full development.

Acknowledgments

To complete a survey of the scope of this *Study of the Problems of School Desegregation in Florida* in less than three months was a task demanding the utmost effort on the part of many people. The time-table during the entire period of the research was such that a delay or a mistake in even the simplest task could prove disastrous. It is a tribute to the untiring diligence of everyone connected with the project that no such disaster occurred, and acknowledgment of their separate contributions is highly appropriate.

At all stages of the research, the members of the Research Advisory Committee, all of them busy with important duties, contributed of their time and their best thinking to make this a sound piece of research. The committee included:

Mr. Richard W. Ervin, Attorney General (Ex Officio)
Mr. Thos. D. Bailey, State Superintendent of Public Instruction (Ex Officio)
Mr. Ralph E. Odum, Assistant Attorney General
Dr. Ralph Eyman, Dean, School of Education, Florida State University
Dr. Sara Lou Hammond, School of Education, Florida State University
Mr. Robert Gates, Department of Education
Dr. Robert E. Lee, Department of Education
Mr. Ed Henderson, Executive Secretary, Florida Education Association
Dr. Gilbert Porter, Executive Secretary, Florida State Teachers Association
Dr. J. B. White, Dean, School of Education, University of Florida
Dr. Manning J. Dauer, Department of Political Science, University of Florida
Dr. Don Larson, Department of Political Science, University of Miami
Dr. George Gore, President, Florida Agricultural and Mechanical University
Mr. Angus Laird, Director, State Merit System
Dr. Richard Moore, President, Bethune-Cookman College
Dr. R. L. Johns, School of Education, University of Florida



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AMOUNT and PER CENT of NONWHITE POPULATION: 1950

State 605,254 (21.8%)

Dr. Mode Stone, School of Education, Florida State University
Mr. D. E. Williams, Department of Education
Dr. T. J. Wood, Department of Political Science, University of Miami
Dr. Lewis M. Killian, Department of Sociology, Florida State University (Coordinator of Research)

Some members of the committee made further contributions to the study. Dr. Larson and Dr. Lee prepared reports which constitute important subsections of the study, and Dr. Dauer prepared an independent report on the experience of other states with desegregation. Dean Eyman, Dean White and President Gore, as well as President Doak S. Campbell, of The Florida State University, released much-needed members of their staffs to assist in the research at various times. Dr. Robert Gates was a constant source of advice and support to the Coordinator.

A special debt is owed to Mrs. Fay-Tyler M. Norton, who served as Assistant Coordinator and Statistical Consultant for the entire period of the research. Her contribution was far greater than the tasks called for in her contract with the Committee, and without her the study could not have been completed.

Dr. J. A. Norton and Dr. Malcolm Parsons, of the School of Public Administration, the Florida State University, conducted the study of Negro voting registration while carrying full teaching loads at the University, but with no additional compensation.

Voluntarily making a vital contribution, as a public service, were Prof. Robert McGinnis and Dr. John Haer of the Sociology Research Laboratory, the Florida State University. Under their direction the laborious task of punching both the questionnaire and the interview data on IBM cards and tabulating these data was carried out.

The field interviewers who worked in ten selected counties, all public school workers drawn away from other important duties and asked to work without personal compensation, revealed a fine sense of duty. The manner in which they carried out their important part of the study indicates that they were well chosen. These interviewers are:

Edwin G. Artest, Tampa
Henry W. Bishop, Gainesville
Mrs. Patricia Carter, Gainesville
John B. Cox, Tampa
Paul F. Davis, Bradenton
Thomas J. Hill, Gainesville
Leroy G. Hooks, Clearwater

Elton L. Jones, Ocala
R. LeRoy Lastinger, Bartow
Mills Lord, Orlando
Julian E. Markham, Sebring
Thord Marshall, Tallahassee
William J. McEntee, Gainesville
Erby Nixon, Panama City
Willie J. Reid, Pensacola
C. C. Washington, Panama City

At a critical point in the study, a small team of workers was called upon to put forth an almost impossible effort in coding a large mass of interview data just received from the field. At great personal sacrifice, they rose to this demand, completing the task in an incredibly short time. One member of this team, Dr. C. U. Smith, of Florida A. and M. University, had already made an important contribution in helping to brief the interviewers before they went into the field. The team of analysts included, in addition to Dr. Smith, the Coordinator of Research, and Mrs. Norton, the following people:

Mr. Robert Gates, State Department of Education
Dr. Robert E. Lee, State Department of Education
Mr. James Condell, Florida A. and M. University
Dr. Henry Cobb, Florida A. and M. University
Mr. Henry Warner, Florida A. and M. University

Mrs. Lillian Walker and Miss Winifred Kitching, of the Office of the Attorney General, shouldered without complaint the additional burden of the major part of the clerical and accounting work incidental to such a comprehensive study. Their contributions were just as vital as those of any of the professional research staff.

Working far harder than they may have expected to when they accepted summer employment, the following young ladies in the Office of the Attorney General did a vast amount of detailed and often dull clerical work for which the research staff is indebted. It is entirely fitting that the youth of Florida should have played a significant part in this public service. These young ladies, all high school or college students, are:

Miss Kathleen Kirk
Miss Maribelle Garris
Miss Pat Gunn
Miss Sonya Fletcher
Miss Bessie Carol Johnson
Miss Barbara Curtis
Miss June Lasseter

A key figure in this project from the moment of its inception has been Mr. Ralph Odum, Assistant to the Attorney General. In addition to expediting the work of the professional research staff, he has contributed his sound thinking to every phase of the study.

Finally, the Committee is deeply indebted to Attorney General Ervin, Superintendent Bailey, and their colleagues of the State Cabinet for making it possible for us to apply our knowledge and skills, as educators and scientists, to the study of this momentous problem.

LEWIS M. KILLIAN
Coordinator of Research

(Appendix B)

Examples of Florida's Constitutional, Statutory and State School Board Regulatory Provisions Relating to Segregation

Florida Constitution

Article XII, Section 1:

Uniform system of public free schools.—The Legislature shall provide for a uniform system of public free schools, and shall provide for the liberal maintenance of the same.

Article XII, Section 12:

White and colored; separate schools.—White and colored children shall not be taught in the same school, but impartial provision shall be made for both.

228.09 Separate schools for white and negro children required.—The schools for white children and the schools for negro children shall be conducted separately. No individual, body of individuals, corporation, or association shall conduct within this state any school of any grade (public, private, or parochial) wherein white persons and negroes are instructed or boarded in the same building or taught in the same classes or at the same time by the same teachers.

229.07 General powers of state board.—Except as limited in the school code, the state board shall have the authority, and when necessary for the more efficient and adequate operation of the state system of public education in carrying out the purposes and objectives of the school code, the state board shall exercise the following general powers:

(1) DETERMINE POLICIES.—The state board shall determine and adopt such policies as are required by law and as in the opinion of the state board are necessary for the more efficient operation of any phase of public education.

• • • •

(3) PRESCRIBE MINIMUM STANDARDS.—Whenever the establishment of minimum standards will aid in providing adequate educational opportunities and facilities, the state board shall adopt such minimum standards for any phase of education as are considered desirable by it in carrying out the provisions of the school code.

229.08 Duties and responsibilities of state board.—It shall be the responsibility of the state board to exercise all powers and perform all duties prescribed below:

* * * *

(20) PRESCRIBE MINIMUM STANDARDS AND RULES AND REGULATIONS.—To prescribe such minimum standards and rules and regulations as are required by law or as are recommended by the state superintendent in accordance with the provisions of subsection (20), §229.17, and as it may find desirable to aid in carrying out the purposes and objectives of the school code.

* * * *

(23) OTHER RESPONSIBILITIES. — To assume such other responsibilities and to exercise such other powers and perform such other duties as may be assigned to it by law or as it may find necessary to aid in carrying out the purposes and objectives of the school code.

229.16 General powers of state superintendent.—The state superintendent shall have the authority, and when necessary for the more efficient and adequate operation of the state system of public education in carrying out the purposes and objectives of the school code, the state superintendent shall exercise the following general powers:

* * * *

(5) RECOMMEND AND PUT INTO EFFECT MINIMUM STANDARDS.—From time to time to prepare, organize by subjects, and submit to the state board for adoption such minimum standards relating to the operation of any phase of the state system of public education as, in his opinion, will aid in assuring more adequate educational opportunities for all, and to see, insofar as practicable, that such minimum standards as are adopted by the state board are put into effect and are properly observed.

229.17 Duties and responsibilities of state superintendent. —It shall be the responsibility of the state superintendent to exercise all powers and perform all duties prescribed below; provided, that in those fields in which policies are required by law to be approved by the state board the state superintendent shall act as the advisor and executive officer of the state board.

* * * *

(20) MINIMUM STANDARDS AND RULES AND REGULATIONS.—To prepare, organize, and recommend to the state board such minimum standards and rules and regulations in the following fields as are required by law or as he may find necessary to aid in carrying out the purposes and objectives of the school code; and to execute such standards and rules and regulations as are adopted by the state board in the following fields: (1) establishment, organization, and operation of schools, agencies, services, and institutions, including the classification or accreditation of parochial, denominational, and private schools; (2) personnel; (3) child welfare; (4) courses of study and instructional aids; (5) transportation; (6) school plant; (7) finance; (8) records and reports.

* * * *

(28) OTHER RESPONSIBILITIES. — To assume such other responsibilities and to perform such other duties as may be assigned to him by law or as may be deemed by him to be necessary to aid in the more efficient operation of the state system of public education in carrying out the purposes and objectives of the school code.

230.23 Powers and duties of county board.—The county board acting as a board shall exercise all powers and perform all duties listed below:

* * * *

(6) ESTABLISHMENT, ORGANIZATION, AND OPERATION OF SCHOOLS.—Adopt and provide for the ex-

ecution of plans for the establishment, organization, and operation of the schools of the county, as follows:

(a) *Schools and attendance areas.*—Authorize schools to be located and maintained in those communities in the county where they are needed to accommodat · as far as practicable and without unnecessary expense all the youth who should be entitled to the facilities of such schools, separate schools to be provided for white and negro children; and approve the area from which children are to attend each such school, such area to be known as the attendance area for that school; provided, that only under exceptional circumstances as defined under regulations of the state board may an elementary school be located within four miles of another elementary school and a high school within ten miles of another high school in rural areas for children of the same race.

239.41 Value of general scholarships.—Each scholarship for the preparation of teachers shall have a value of four hundred ($400.00) dollars each year and shall be awarded in the following manner:

* * * *

(2) In accordance with these requirements, the principals and county superintendents of each county shall select and recommend, on the basis of merit, a number of high school graduates who are bona fide residents of the State of Florida, as defined in section 97.041, Florida Statutes, which shall be proportionate to the white or Negro population in the county and who are interested in teaching and whose work and qualifications are such as to indicate that they possess the qualities which should be possessed by a successful teacher; provided that each county shall have at least one scholarship for a Negro student.

Adopted April 27, 1954
Section 236.04 (10)

State Board Regulation
relating to

THE CALCULATION OF INSTRUCTION UNITS AND SALARY ALLOCATIONS FROM THE FOUNDATION PROGRAM

(Repealing regulation adopted June 16, 1953)

Instruction units and salary allotments from the Foundation Program will be calculated separately for white and Negro schools.

No county will receive a greater allotment for salaries for either race than the salaries actually paid the teachers of that race or the calculated amount for that race based on instruction units and training, whichever amount is smaller.

In applying the provisions of Section 236.04 (10), providing that 95% of instructional units allocated to a county must be filled, the units calculated for each race will be considered separately, and 95% of the instructional units for each race must be filled.

Adopted March 21, 1950
Section 236.04 (7)

State Board Regulation
relating to
ADMINISTRATIVE AND SPECIAL INSTRUCTIONAL SERVICE

(Adopted in accordance with the provisions of Section 236.04 (7), Chapter 23726, Laws of Florida, Acts of 1947)

1. *Eleventh and Twelfth Month Personnel.*

Each county superintendent shall file with the State Superintendent on or before May 15 of each year Form A for the use of its administrative and special instructional service personnel. In addition, the county superintendent shall file a plan for the 11th and 12th month program which includes for each race the title and duties assigned for each such unit. Any revision in the plan submitted must be approved by the State Department of Education.

On or before October 1, each county superintendent shall file with the State Superintendent a complete description of the program which operated during the 11th and 12th months, including for each race the title, name, certificate number, rank and duties of each person employed through the use of administrative and special instructional service units.

Ten Months Personnel.

On or before August 15 of each year the county superintendent shall file with the State Superintendent a plan for use of ten months personnel service units (Form C) which includes for each race the title and duties assigned for each such unit together with name, certificate number, and rank of the individual filling the position. Any proposed revision

in plans for use of ten months personnel shall be submitted by January 15 of each year.

2. Any administrative and special instructional service units to which a county is entitled under Section 236.04 (7), Chapter 23726, Laws of Florida, Acts of 1947, which is not used in accordance with regulations prescribed by the State Board of Education shall be deducted either in the current or the succeeding fiscal year as provided in Section 236.07 (9-e), Chapter 23726, Laws of Florida, Acts of 1947.

Adopted March 21, 1950
Section 236.04 (8)

State Board Regulation
relating to

UNITS FOR SUPERVISORS OF INSTRUCTION

(Adopted in accordance with the provisions of Section 236.04 (8), Florida Statutes as amended by Section 29 of Chapter 23726, Laws of Florida, Acts of 1947)

1. *Application for Instruction Units for Supervisors.*

a. Each County Board shall file through the County Superintendent an application for using instruction units for supervision. This application shall be filed on forms provided by the State Superintendent on or before May 15 of each year.

b. Approval of any application for instruction units for supervision may be given by the State Superintendent when a satisfactory administrative plan for the use of such units (or desirable modification of the initial plan submitted) shall have been developed and approved jointly by the County Superintendent and the State Superintendent which will insure the most effective and economical expenditure of funds. Application for use of state funds for supervisory

services must include: first, provision for general supervision over the common branches of study in all the elementary and secondary grades. Included as a part of the administrative plan for supervision prescribed above, the County Superintendent shall file brief statements outlining (1) the duties to be performed by the supervisor(s); (2) the total annual salary and number of months of employment (in case of a general supervisor(s) this must be twelve months and of special supervisor(s) at least ten months; (3) the amount to be paid for travel; (4) the qualifications of the supervisor who is to be employed.

c. Instruction units for supervisory purposes may be tentatively allocated if the administrative plan for the use of such units required in the preceding section is satisfactory, even though the nomination of the person(s) to fill the supervisory position(s) is pending.

2. *Administrative Plan for Employment of Supervisory Personnel.*

In arriving at a satisfactory plan for supervision in any county, the County Superintendent and the State Superintendent shall select one of the following plans which best fits the needs of the county involved:

a. Single-County Plan

(1) For General Supervision

(a) The instruction unit to which each county is entitled for the employment of a general supervisor may be used for the employment of one person who will have general supervision of white and Negro schools.

(b) The additional instruction units available for supervision, if any, may be used for the employment of separate general supervisors for white and Negro schools, or for some area or special supervisors.

(c) In counties earning fifty teacher units or less, one

person may be employed to perform the functions of both supervisor of instruction and supervising principal of a school center.

Any person employed as combined general supervisor and supervising principal must be properly certificated for both positions, i.e., hold a Rank II or higher certificate covering both elementary and secondary administration and supervision.

(2) For Special Subject or Field Supervision

(a) Counties entitled to supervisory units in addition to the one reserved for general supervision may use such extra units for employment of additional supervisors, provided, one supervisor shall be employed for each of the units used and provided further that not more than one supervisor in any special subject field may be employed in a county.

b. Joint-County Plan

(1) For Counties Having Not More Than One Supervisory Unit:

Any two or three contiguous counties entitled to not more than one unit each for supervision may submit a cooperative proposal for the joint employment of a supervisor or supervisors in accordance with one or more of the following plans:

(a) Cooperative Plan for General Supervision

Such counties may employ jointly one general supervisor for work with both white and Negro schools; or may employ separate general supervisors for white and Negro schools, provided the cooperative arrangement would not result in any general supervisor's carrying a total load of over 75 teachers.

(b) Cooperative Plan for Special Subject or Field Supervision

After providing for general supervisors, counties may use the remaining supervisory units to which they may be entitled for the purpose of cooperatively employing supervisors in special area or subject fields, provided that not more than one unit from any individual county may be so used for employment of any one supervisor.

(c) Cooperative Plan for School Lunch Supervision

In counties having less than ten school lunch programs, the plan for supervision may be as follows:

Two or three counties may employ a school lunch supervisor on a joint county plan provided that no school lunch supervisor may be responsible for more than thirty school lunch programs.

(2) For Counties Having More Than One Supervisory Unit

After providing independently for general supervision, such counties may use supervisory units beyond the first unit for cooperative employment of special supervisors in accordance with section 2-b-(1)-(b) above.

3. *Salaries and Travel Expense of Supervisors.*

a. Supervisors shall be paid the basic salary schedule of the county for teachers based upon training, experience, and employment on either a ten or twelve months basis plus an appropriate supplement in keeping with the duties and responsibilities of the position.

b. The amount to be paid to the supervisor for travel must be adequate in terms of the territory and number of schools to be served and shall be fixed by the County Board of Public Instruction in accordance with the joint recommendation of the County Superintendent and the State Superintendent.

Adopted May 29, 1951
Section 230.23 (6)

State Board Regulation
relating to

ESTABLISHMENT, ORGANIZATION AND OPERATION OF SMALL SCHOOLS

(Repealing Regulation adopted March 21, 1950, page 24)

1. No school with an average daily attendance of less than ten pupils in the elementary, junior or senior high school grades may be continued in operation through the use of Minimum Foundation Program funds except when such school is so isolated that transportation of the pupils to another school would not be feasible because of distance, road conditions, or excessive expense, or except when pupils cannot be provided with equivalent or better educational facilities in another school. If a school is to be operated as an isolated school, an application for such operation must be filed with the State Superintendent at least one month before any Minimum Foundation Program funds may be used for the school, giving all facts which may be required as a basis for approval. Approval for the operation of an isolated school will be granted by the State Superintendent of Public Instruction only after consideration of all the facts.

Adopted July 3, 1947
Section 230.34 (8)

State Board Regulation
relating to

SCHOOL ADVISORY COMMITTEES

(Adopted in accordance with the provisions of section 230.34 (8), Chapter 23726, Laws of Florida, Acts of 1947)

If the county board of a county exercises its discretion and determines to set up School Advisory Committees, the following regulations shall apply:

1. The county may be divided into school community areas for each race in accordance with the attendance areas for each school community for each race, or the Board may divide the county into school community areas which areas encompass the schools for both races.

2. Members of the School Advisory Committee may be selected for any school community area by either of the following methods as may be determined by the county board:

a. The Board may provide for the selection of members of the School Advisory Committee at a community meeting called in each school community area at the place designated by the Board of Public Instruction; the hour, the date and place of such meeting to be advertised at least once, at least one week before the meeting in a paper published in the county or in some paper of general circulation in the county.

b. The School Advisory Committee may be appointed by the school board either from lists submitted by a community meeting or directly by the board.

3. If the Board determines that the School Advisory Com-

mittee shall be selected at a community meeting called in the school community area as prescribed above, parents or guardians of children attending school in the school community area and adult residents of such area shall be entitled to vote for members of the School Advisory Committee.

4. Any adult residing in a school community area is eligible to be selected as a member of the School Advisory Committee.

5. If the Board determines to select School Advisory Committees by the community meeting method, the Board shall determine the time, place, and hour of the meeting but the date selected must be between September 1 and December 31 preceding the January 1 on which School Advisory Committees take office.

6. The members of the School Advisory Committee shall exercise and perform such duties as are prescribed in Section 230.34 (8) of Chapter 23726, Laws of Florida, Acts of 1947.

7. The supervising principal or principal shall serve as secretary of the School Advisory Committee.

Adopted March 21, 1950
Section 236.02 (4)

State Board Regulation
relating to

QUALIFICATIONS, DUTIES AND PROCEDURE FOR EMPLOYMENT OF SUPERVISORS OF INSTRUCTION

(Adopted in accordance with the provisions of Section 236.02 (4), Chapter 23726, Laws of Florida, Acts of 1947)

1. Types and Qualifications of Supervisors

In addition to the objective standards set forth below, all persons employed as supervisors should possess the many intangible qualifications necessary to success in supervisory work.

a. General Qualifications

(1) Age—To be eligible for initial appointment the supervisor shall be between the ages of 25 and 55 years.

(2) Physical Fitness—To be eligible for initial appointment the supervisor must have passed satisfactorily a physical examination given by a regular practicing physician and must have filed a report of such examination on the form now adopted by the State Board of Health; at the discretion of the State Superintendent the applicant may be required to take a special examination given by a physician designated by the State Board of Education.

(3) Leadership and Personal Characteristics—Each applicant for a supervisory position must file with the County Superintendent and the State Superintendent a completed application form setting forth experience, leadership activities, personal characteristics, and other items as may be included on a form prescribed and adopted by the State Board of Education.

b. Special Qualifications* (see note)

(1) Qualifications of General Supervisors

General Supervisors shall meet the following requirements:

(a) Hold a valid teaching certificate, graduate or above, having on face thereof, "Administration and Supervision," covering both elementary and secondary levels.

Temporary approval may be given for a general supervisor who does not meet certification requirements in full, provided, a plan for securing full certification within two years is filed and carried out.

(b) Have five years successful experience including teaching and/or administrative and supervisory responsibility, at least two years of which experience shall have been completed within the five years immediately preceding appointment to a supervisory position.

(c) Beginning supervisors shall hold a certificate of Rank II or above in accordance with Section 236.07 (1), Chapter 23726, Laws of Florida, Acts of 1947.

(2) Qualifications of Supervisors at the Elementary or Secondary School Levels.

Supervisors whose duties are limited to the elementary or secondary school levels shall meet the following requirements:

(a) Hold a valid teaching certificate, graduate or above, having on the face thereof "Administration and Supervision" covering the level to be supervised.

(b) Have five years successful experience including teach-

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* Requirements here set forth are to be considered a minimum and every effort shall be made to secure the services of persons with much higher types of qualifications and experience. When a supervisor is appointed who meets only minimum requirements he shall be required to make every effort to improve his qualifications consistent with the proper performance of the duties to which assigned.

ing and/or administrative and supervisory responsibility, at least two years of which experience shall have been completed within the five years immediately preceding appointment to a supervisory position. At least three years of the experience shall have been in the level to be supervised and the degree upon which certificate is issued shall have included the special level to be supervised as a major field of training.

(c) Beginning supervisors shall hold a certificate of Rank II, or above.

(3) Qualifications of Supervisors of Special Subjects or Special Programs.

(a) Hold a valid teaching certificate, graduate or above, or its equivalent, in the field for which responsibility is given.

(b) Five years successful experience as a teacher, administrator, or supervisor in the field for which responsibility is given, at least two years of which shall have been completed within the five years immediately preceding appointment to the supervisory position.

(c) Academic specialization shall have included the field to be supervised and the field of education including at least six semester hours in curriculum and supervision.

2. Duties of Supervisors.

a. Persons employed through the use of supervisory units shall give full time to working with teachers, principals, and other school personnel in the field of instruction. Under no circumstances will administrators or administrative assistants be certified from supervisory units.

b. In counties not employing a supervisor of Negro schools the general supervisor shall have his services equitably apportioned among the schools (white and/or Negro) in the one or more counties by whom he is employed.

c. General supervisors shall be paid and subject to duty on a twelve months basis, and special supervisors on not less than a ten months basis. Supervisors shall attend all conferences called by the State Superintendent of Public Instruction which are related to the satisfactory performance of supervisory duties.

d. Supervisors shall make such periodic reports relative to their plans and accomplishments as may be required by the Division of Instruction of the State Department of Education.

3. Procedure for Employment of Supervisors

a. The employment of persons to fill supervisory positions in a county shall follow the procedure prescribed by law and by State Board Regulations for other instructional personnel up through the point where the County Board of Public Instruction has approved the nomination of the individual concerned. The County Superintendent shall then certify the action to the State Superintendent of Public Instruction, furnishing all information necessary to enable the State Superintendent to present the matter to the State Board of Education for approval or disapproval. The action of the State Board of Education shall then be certified by the State Superintendent to the County Superintendent. In the event the State Board concurs in the action of the County Board, the County Board may then proceed with contracting for the services of the supervisor. In the event the State Board finds the individual not qualified or for other reasons rejects the nomination of the individual concerned, the County Superintendent shall initiate action to secure the nomination of some other individual qualified for the position.

b. The dismissal of persons in supervisory positions in a county shall follow the procedure prescribed by law and by State Board Regulations for other instructional per-

sonnel with the additional requirement that approval of the State Board of Education shall be necessary before the dismissal of any supervisor may be effectuated.

Adopted July 3, 1947
Section 236.04 (1) (2)

State Board Regulation
relating to

ISOLATED SCHOOLS

(Adopted in accordance with the provisions of Section 236.04 (1) and (2), Chapter 23726, Laws of Florida, Acts of 1947)

1. Instruction units for all non-isolated schools with less than 120 pupils in average daily attendance will be calculated by dividing the average daily attendance of such schools by 27.

2. *ISOLATED SCHOOLS.* Any school having less than 120 pupils in average daily attendance shall be considered an isolated school for the purpose of computing instruction units when any of the following conditions are found to exist:

a. *Elementary Schools*

(1) *School with 90 to 119 pupils inclusive in average daily attendance:* If it is more than six miles by the nearest passable road from another elementary school for the same race in which satisfactory facilities could be provided.

(2) *School with from 60 to 89 pupils inclusive in average daily attendance:* If it is more than eight miles by the nearest passable road from another elementary school for the same race in which satisfactory facilities could be provided.

(3) *School with 59 pupils or less in average daily attendance:* If it is more than ten miles by the nearest passable road from another elementary school for the same race in which satisfactory facilities could be provided.

(4) If more than 15% of the pupils to be transported would have to be on the bus for an average of more than one hour each morning or evening.

(5) Not more than one instruction unit shall be allowed for any one-teacher elementary school regardless of whether it is considered an isolated school; Provided, however, that an instruction unit will not be allotted for a school with an average daily attendance of less than nine, unless evidence is presented to the State Superintendent showing that consolidation of this school is impossible.

b. *Junior High Schools*

(1) *School with 90 to 119 pupils inclusive in average daily attendance:* If it is more than seven miles by the nearest passable road from another junior high school for the same race in which satisfactory facilities could be provided.

(2) *School with from 60 to 89 pupils inclusive in average daily attendance:* If it is more than nine miles by the nearest passable road from another junior high school for the same race in which satisfactory facilities could be provided.

(3) *School with 59 pupils or less in average daily attendance:* If it is more than eleven miles by the nearest passable road from another junior high school for the same race in which satisfactory facilities could be provided.

(4) If more than 25% of the pupils to be transported would have to be on the bus for an average of more than one hour each morning or evening.

(5) Unless a center has a ninth grade or is definitely organized as part of a high school it is to be considered

an elementary school for purposes of computing instruction units and determining isolation.

c. *Senior High Schools*

(1) *School with 90 to 119 pupils inclusive in average daily attendance:* If it is more than eight miles by the nearest passable road from another senior high school for the same race in which satisfactory facilities could be provided.

(2) *School with 60 to 89 pupils inclusive in average daily attendance:* If it is more than ten miles by the nearest passable road from another senior high school for the same race in which satisfactory facilities could be provided.

(3) *School with less than 59 pupils in average daily attendance:* If it is more than twelve miles by the nearest passable road from another senior high school for the same race in which satisfactory facilities could be provided.

(4) If more than 25% of the pupils to be transported would have to be on the bus for an average of more than one hour each morning or evening.

(5) Unless a center has a twelfth grade it is to be considered as a junior high school for purposes of computing instruction units and determining isolation.

3. *TEMPORARY ISOLATED SCHOOLS.* Any school having less than 120 pupils in average daily attendance shall be considered a *temporarily isolated school* for the purpose of computing instruction units when satisfactory facilities cannot be provided at another appropriate center within the distances prescribed above, or when the pupils cannot be transported because of road conditions; provided, however, no school will be considered as temporarily isolated because of lack of building facilities after July 1, 1948.

Adopted July 21, 1953
Section 239.38
239.41
239.42

State Board Regulation
relating to

THE DISTRIBUTION OF GENERAL SCHOLARSHIPS

1. In accordance with provisions of Sections 239.38, 239.41 and 239.42, Florida Statutes as amended by the 1953 Legislature, the following distribution of scholarships is established:

	White	Negro	Total
Alachua	16	7	23
Baker	7	1	8
Bay	17	4	21
Bradford	8	2	10
Brevard	13	3	16
Broward	21	7	28
Calhoun	7	1	8
Charlotte	5	1	6
Citrus	6	2	8
Clay	10	2	12
Collier	6	2	8
Columbia	11	2	13
Dade	54	10	64
DeSoto	8	1	9
Dixie	5	1	6
Duval	40	12	52
Escambia	27	6	33
Flagler	4	1	5
Franklin	6	1	7
Gadsden	10	9	19
Gilchrist	4	1	5

The Distribution of General Scholarships (Continued)

	White	Negro	Total
Glades	3	1	4
Gulf	7	1	8
Hamilton	7	2	9
Hardee	9	1	10
Hendry	6	1	7
Hernando	7	1	8
Highlands	9	2	11
Hillsborough	42	6	48
Holmes	11	1	12
Indian River	9	2	11
Jackson	12	6	18
Jefferson	6	4	10
Lafayette	4	1	5
Lake	15	4	19
Lee	13	2	15
Leon	15	8	23
Levy	8	2	10
Liberty	3	1	4
Madison	8	4	12
Manatee	15	3	18
Marion	13	6	19
Martin	6	2	8
Monroe	15	2	17
Nassau	9	2	11
Okaloosa	15	1	16
Okeechobee	4	1	5
Orange	28	5	33
Osceola	9	1	10
Palm Beach	24	9	33
Pasco	12	2	14
Pinellas	34	4	38
Polk	29	5	34
Putnam	12	3	15

The Distribution of General Scholarships (Continued)

	White	Negro	Total
St. Johns	12	4	16
St. Lucie	11	3	14
Santa Rosa	12	1	13
Sarasota	15	2	17
Seminole	11	5	16
Sumter	8	2	10
Suwannee	11	2	13
Taylor	8	2	10
Union	7	2	9
Volusia	20	6	26
Wakulla	5	2	7
Walton	9	3	12
Washington	10	1	11
Total	843	207	1050
	80.3%	19.7%	100%

If any county shall receive more scholarships under this distribution than the total of its General, Representative, and Senatorial scholarship holders on the 1953-54 scholarship roll, the additional scholarships shall not be activated until it is ascertained that the appropriation for scholarships is sufficient for this purpose.

2. Within the allocation tentatively allotted each county, vacancies shall be declared in such a manner as to insure having, whenever possible, not less than twenty-five per cent of the total number of awards open to white and to Negro students respectively who would enter an approved Florida institution as freshmen during each and every year. Where there are sufficient vacancies in any county to allow such distribution, twenty-five per cent of the total number

shall also be made available to persons falling in each of the following levels: sophomore, junior, senior.

3. A scholarship holder must register in the school, college, or department of education of an institution of higher learning located in Florida and approved by the State Board of Education for teacher education and certification.

4. The State Superintendent shall have authority to declare in which teaching fields applicants must train to be eligible for a scholarship.

5. A General Scholarship for the Preparation of Teachers may be renewed annually for a period of four years, but may not be used for work beyond the four-year degree level nor after the holder has received $1600.00 in scholarship funds.

6. Examinations to fill vacancies for General Scholarships are to be held twice a year, in the fall and in the spring. The State Superintendent of Public Instruction shall make all arrangements for these examinations and shall supervise the selection of winners, etc.

7. If for any reason, illness included, a scholarship holder must remain out of college for longer than one semester, he will forfeit his scholarship. If later he returns to college and desires scholarship aid, he must re-apply by submitting a new application for a declared vacancy. An exception may be made in the case of a scholarship holder called into the Armed Services. If the veteran desires scholarship reinstatement upon his return from service, his scholarship may be restored to him if a vacancy exists in his county.

8. If on July 1 of any year, quotas for white or Negro students with respect to General Scholarships for the Preparation of Teachers remain unfilled in any county, and if upon investigation by the State Superintendent it is found that such conditions exist because of (1) a dearth of persons interested in making application or (2) the failure of ap-

plicants to make the required minimum score, the State Superintendent may declare such vacancies to exist on a state-wide basis. The state-wide vacancies declared should then be awarded in the following manner:

a. A roster shall be compiled containing the names of eligible persons making the minimum passing score who failed to receive an award on the latest examination.

b. From such roster, in order of rank of excellence and in keeping with the college-year level for which the vacancies placed in the state-wide pool exist, awards are to be made.

c. Persons receiving such awards will be permitted to continue them from year to year, as provided by law, until the termination of the scholarship; at the end of this period, such vacancies shall be again restored to the counties to which they were originally allocated.

9. This repeals paragraph 2, pages 225-26 of State Board Regulation relating to Summer School Scholarships and Scholarships for Preparation of Teachers, pages 224-26, adopted July 6, 1949.

Adopted July 21, 1953
Sections: 239.19
239.38-239.44

State Board Regulation
relating to

SCHOLARSHIP COMMITTEE

The State Scholarship Committee shall be composed of eight members appointed by the State Superintendent of Public Instruction. The membership shall be the dean of education of each of four colleges or universities approved for teacher education for white teachers, the president or dean of education of one college or university approved for teacher education for Negro teachers, the dean or the director of one approved junior college, and two members of the State Department of Education.

Two members shall be appointed for a one year term, two for two years, two for three years, and two for four years. Thereafter each member shall be appointed for a term of four years.

Any vacancy shall be filled for the unexpired term by appointment by the State Superintendent of Public Instruction.

The committee shall elect its chairman and recorder for terms not to exceed two years.

The duties of the committee shall be to formulate policies and make recommendations that will add to the effectiveness of the scholarship program.

The committee shall meet at least twice a year and at such other times as the chairman shall consider necessary.

The committee may invite other officials concerned with the administration of the scholarship program to meet with the committee at any meeting.

Adopted November 16, 1948
Sections 239.41 thru
239.44
239.19 thru
239.24

State Board Regulation
relating to

SCHOLARSHIPS FOR PREPARATION OF TEACHERS AND HOUSE AND SENATORIAL SCHOLARSHIPS

(Adopted in accordance with the provisions of Sections 239.41 thru 239.44 and Sections 239.19 thru 239.24, Florida Statutes, as amended by Chapter 23726, Laws of Florida, Acts of 1947)

The method and manner of handling and collecting scholarship notes which may become in default shall be as follows:

The President of each institution of higher learning where the scholarship was held shall give such assistance as may be reasonably requested by the State Treasurer in the collection of scholarship notes which have become payable by reason of the scholarship holder failing to perform services in satisfaction of his scholarship note.

Adopted July 3, 1947
Section 242.05 (1)

State Board Regulation
relating to

STATE SUPERVISORY SERVICES

(Adopted in accordance with the provisions of Section 242.05(1), Florida Statutes, 1941, as amended by Chapter 23726, Laws of Florida, Acts of 1947)

1. The use of State Supervisory Funds shall be in accordance with a budget for a program planned as a part of the State Department of Education services for supervision of white and Negro schools as recommended by the State Superintendent of Public Instruction.

2. Recommendations for nomination of persons to fill State Supervisory positions shall be submitted to the State Board of Education by the State Superintendent of Public Instruction. In no case may any individual be certified, nominated, or paid any salary from State Supervisory Funds who does not meet the qualifications prescribed by the State Board of Education for holding supervisory positions of the type being filled.

3. Approval by the State Board of Education shall be necessary before any State Supervisory Funds may be paid to any person recommended and employed in accordance with the preceding section; approval of both the State Superintendent of Public Instruction and the State Board of Education shall be necessary before the dismissal of any supervisor employed through use of State Supervisory Funds may be effectuated.

4. Included as a part of the administrative plan for supervision the State Superintendent shall file with the recommendation a brief statement outlining (1) the duty to be

performed by the supervisor; (2) the total annual salary; (3) the amount to be paid for travel; and, (4) qualifications of supervisor to be employed.

5. The qualifications and duties of State Supervisors shall be in accordance with the types of qualifications and the duties as listed for County Supervisors as would be applicable to work on the State level.

Adopted February 14, 1950
Sections 234.01 thru 234.25
and related sections.

State Board Regulation
relating to

TRANSPORTATION OF PUPILS

(Adopted in accordance with Chapter 234 and related sections of Florida Statutes)

• • • •

(8) The land sections shall be computed separately for white and Negro races.

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HAROLD B. WILLEY, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1953

Nos. 1, 2, ~~4~~ 3 and ~~10~~ 5

OLIVER BROWN, ET AL.,
Appellants,
vs.
BOARD OF EDUCATION OF TOPEKA, SHAWNEE COUNTY, KANSAS, ET AL.,

HARRY BRIGGS, JR., ET AL.,
Appellants,
vs.
R. W. ELLIOTT, ET AL.

DOROTHY E. DAVIS, ET AL.,
Appellants,
vs.
COUNTY BOARD OF PRINCE EDWARD COUNTY, VIRGINIA, ET AL.

FRANCES B. GEBHART, ET AL.,
Petitioners,
vs.
ETHEL LOUISE BELTON, ET AL.

AMICUS CURIAE BRIEF OF THE ATTORNEY GENERAL OF MARYLAND

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The Daily Record Co., Baltimore 3, Md.

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AMICUS CURIAE BRIEF OF THE ATTORNEY GENERAL OF MARYLAND

I. PRELIMINARY STATEMENT

This amicus curiae brief filed by the Attorney General of Maryland, pursuant to permission granted by this Honor-

able Court, is intended to be exactly what its name imparts, i.e., we shall endeavor, as a friend of the court to assist in the resolution of the questions propounded. The Attorney General is, of course, not intervening in the cause, nor is he authorized to submit the State of Maryland as a party to the instant case. The opinions expressed herein are those of the Attorney General and, of course, do not preclude the Legislature of the State of Maryland, nor the people thereof from taking any action dealing with the segregation problem which may in the future seem desirable to those bodies.

A thorough study has been made for the assistance of the Attorney General by the educational authorities of the State, and our argument must necessarily, to a great degree, be based upon the facts as they exist in the State of Maryland, which a cursory study indicates are not greatly different from those in most of the other States involved, i.e. those States either requiring or permitting segregation, because of color, in public education. The general feeling of the people of Maryland on the subject is substantially similar, although perhaps not as intense as that of the people of the States further South, and the laws of Maryland requiring segregation in education (App. 72, 73) are substantially similar to those of the States from which the cases before the Court have arisen. A more detailed review of the factual situation in our State will be made during the course of argument herein, and, at this point, the Court may be assured that no attempt has been made herein to circumvent or contest the broad principles of law as stated by this Court in its previous opinion in these cases, and the Attorney General, speaking for himself and the State Department of Education at least, assures the Court of the good faith of the State of Maryland in its endeavor to implement this Court's decision.

II. QUESTIONS PRESENTED

Strictly speaking, an amicus curiae should address himself exclusively to the Court's decision in the particular cases at the bar. However, in view of the language of the opinion previously given which, in effect, considers these cases as though they were in form as well as in substance, class actions, this amicus curiae will endeavor to assist the Court in a broader manner than would normally be indicated. The Court has presented for argument questions 4 and 5, previously considered, namely:

> "4. Assuming it is decided that segregation in public schools violates the Fourteenth Amendment
>
> "(a) would a decree necessarily follow providing that, within the limits set by normal geographic school districting, Negro children should forthwith be admitted to schools of their choice, or
>
> "(b) may this Court, in the exercise of its equity powers, permit an effective gradual adjustment to be brought about from existing segregated systems to a system not based on color distinctions?
>
> "5. On the assumption on which questions 4(a) and (b) are based, and assuming further that this Court will exercise its equity powers to the end described in question 4(b),
>
> "(a) should this Court formulate decrees in these cases;
>
> "(b) if so, what specific issues should the decrees reach;
>
> "(c) should this Court appoint a special master to hear evidence with a view to recommending specific terms for such decrees;
>
> "(d) should this Court remand to the courts of first instance with directions to frame decrees in these cases, and if so, what general directions

should the decrees of this Court include and what procedures should the courts of first instance follow in arriving at the specific terms of more detailed decrees?"

We believe that these questions should be resolved in favor of an affirmative answer to Question 4(b), and a further affirmative answer to Question 5(d), with certain reservations and qualifications, which will be suggested in the course of argument.

III. ARGUMENT

1.

This Court May and Should, in the Exercise of its Equity Powers, so Frame its Decree as to Effect an Effective, Gradual Adjustment to be Brought About From Existing Segregated Systems of Public Education to Systems Not Based on Color Distinctions.

There is a plenitude of authority to support the conclusion that this Court (and, for that matter, the court of first instance) has the power to decree an effective, gradual adjustment of the problems involved in the matter of racial segregation in public education.

Undoubtedly, the violation of a legal right, and specifically the violation of the right to equal protection of the laws guaranteed by the 14th Amendment to the Constitution of the United States, is a proper subject for an equitable decree or injunction to enforce the maintenance of that right in the cases before the Court. However, the questions which have arisen are not confined to the rights of the parties to the cases themselves alone, but involve a deep and lasting effect upon a large portion of our nation. For all practical purposes, a new right has been created for the possible benefit of approximately two million children and

their parents, and, as always, with the creation of legal rights, one of the effects is bound to be a limitation of rights or privileges, real or fancied, theretofore enjoyed by others.

The Congress has empowered this Court to grant any remedy which it may find consonant with the public interest, and that of the parties involved. 28 U. S. C. A., 2106 states:

> "The Supreme Court or any other court of appellate jurisdiction may affirm, modify, vacate, set aside or reverse any judgment, decree, or order of a court lawfully brought before it for review, and may remand the cause and direct the entry of such appropriate judgment, decree, or order, or require such further proceedings to be had as may be just under the circumstances. (June 25, 1948, c. 646, 62 Stat. 963.)"

This Honorable Court has shown by its decisions on many occasions the broad and flexible character of its powers in adopting remedies to the circumstances of the case. In *Virginian R. Co. v. System Federation* R. E. D., 300 U. S. 515, at 552, this Court said:

> "Courts of equity may, and frequently do, go much farther both to give and withhold relief in furtherance of the public interest than they are accustomed to go when only private interests are involved."

Language particularly applicable to the present situation was used by this Court in *Addison v. Holly Hill Co.*, 322 U. S. 607 at 619, wherein it was said that:

> "Such a disposition is most consonant with justice to all interests in retracing the erroneous course that has been taken."

It has appeared from the Court's previous opinion in these cases that most of the nation has been operating under the erroneous supposition that segregation in public edu-

cation was not a violation of the prohibitions of the 14th Amendment as long as facilities provided for the races were substantially equal, and this Court should make a disposition of the cases consonant with justice to all interests involved in retracing the erroneous course that has been taken. It must be recognized that dangerous consequences could very well follow any other course in this Honorable Court's final decree.

In the case of *Yakus v. United States*, 321 U. S. 414 at 441, 88 L. Ed. 834 at 857, this Court said:

> "But where an injunction is asked which will adversely affect a public interest for whose impairment, even temporarily, an injunction bond cannot compensate, the court may in the public interest withhold relief until a final determination of the rights of the parties, though the postponement may be burdensome to the plaintiff. Virginian R. Co. v. United States, 272 U. S. 658, 672, 673, 71 L. ed. 463, 471, 47 S. Ct. 222; Petroleum Exploration v. Public Serv. Commission, 304 U. S. 209, 222, 223, 82 L. ed. 1294, 1303, 1304, 58 S. Ct. 834; Dryfoos v. Edwards (D. C.) 284 F. 596, 603, affirmed in 251 U. S. 146, 64 L. ed. 194, 40 S. Ct. 106; see Beaumont, S. L. & W. R. Co. v. United States, 282 U. S. 74, 91, 92, 75 L. ed. 221, 233, 51 S. Ct. 1. Compare Wisconsin v. Illinois, 278 U S. 367, 418-421, 73 L. ed. 426, 434-436, 49 S. Ct. 163. This is but another application of the principle, declared in Virginian R. Co. v. System Federation, R. E. D. 300 U. S. 515, 552, 81 L. ed. 789, 802, 57 S. Ct. 592, that 'Courts of equity may, and frequently do, go much farther both to give and withhold relief in furtherance of the public interest than they are accustomed to go when only private interests are involved.' "

The abolition of segregation in public education is beyond question a problem of great public interest and undoubtedly a court of equity may grant or withhold its

aid and the manner of moulding its remedies should be influenced by the public interest involved. This is nothing new to courts of equity in the State of Maryland. For example, in the case of *Caretti v. Broring Building Co.*, 150 Md. 198, 132 A. 619, the Court of Appeals of Maryland determined in a case brought to enjoin a nuisance (namely the emptying of sewage into a stream of water flowing through Caretti's land) that since the sudden closing of the system, which admittedly was creating an enjoinable nuisance, might create a serious situation affecting others than the plaintiff and defendant, that the case should be remanded to the lower court with instructions to issue an injunction, *unless within a reasonable time* the Company changed its system in such a way as to avoid injury to Caretti. See also *Baltimore v. Brack*, 175 Md. 615, 3 A. 2d 471. In the case of *Georgia v. Tennessee Copper Co.*, 206 U. S. 230, a suit in equity to enjoin the Tennessee Copper Company from emitting noxious gas over an area in the State of Georgia, this Court held that there is no alternative to the issuance of an injunction *after allowing a reasonable time* to the defendants to complete efforts that they were at that time making to remedy the situation.

Apparently an important factor in all of the cases is the good faith of the defendant in his effort to alleviate the condition complained of by the plaintiff, and the courts under such circumstances have been loathe to use drastic remedies to enforce even obvious rights where such enforcement might cause inconvenience or damage to third parties, or even to the defendant himself.

With reference to the State of Maryland, the Department of Education and the State Law Department, as represented by the Attorney General, have accepted the decision of the Supreme Court and are currently engaged in planning to

take such action as has been indicated is required by law by this Court's previous opinion, and as may be further indicated by the final decree in these cases. See the Report to the State Board of Education and the Attorney General of Maryland by the School Superintendent's Committee (App. 1). See also the Statement of the State Board of Education, May 26, 1954 (App. 17). We will consider below at greater length the current factual situation with respect to public education administration and public opinion in the State of Maryland, but suffice it to say at this time that the good faith of the State cannot be questioned in the premises, and it is respectfully urged, for the above reasons, that the answer to Question 4 should be an affirmative one with respect to 4(b), i.e. that this Court should exercise its existing equity powers to permit an effective, gradual adjustment to be brought about as the most equitable solution of the problem created by the impact of this Court's decision upon established practices and mores. In the words of the Solicitor General of the United States, in an address before the Judicial Conference of the Fourth Circuit, on June 29, 1954:

> "* * * In our system the Supreme Court is not merely the adjudicator of controversies, but in the process of adjudication it is in many instances the final formulator of national policy. It should therefore occasion no wonder, if the Court seeks the appropriate time to consider and decide important questions, just as Congress or any other policy-making body might. For example, for several years before taking the School Segregation Cases the Court repeatedly turned away opportunities to decide questions in that area, *perhaps* because they deemed them premature. Lately it declined to review a ruling on segregation in public housing, *perhaps* because the Court thought it best, after deciding the School Cases, not to say more on other aspects of segregation at this time. Or the Court may think the

record in the case at hand not adequate or otherwise unsuitable to raise and decide the point. We can only speculate. In the decision of great constitutional questions, especially those which are in the realm of political controversy, timing can be of supreme importance."

2.

These Cases Should be Remanded to the Courts of First Instance to Frame Decrees in Accordance With the General Principles of Law as Stated by This Court in its Opinion, and Without Specific Directions as to Methods or Time of Compliance, Which Questions Should be Determined by the Courts of First Instance in the Light of Local Conditions as They May be Found to Exist.

It is the contention of this amicus curiae that the cases before the Court should be remanded to the courts of first instance for the framing of decrees in accordance with the general principles of law as stated in the Court's opinion of May 17, 1954, with specific instructions only to frame such decrees so as to permit an effective, gradual adjustment to be brought about. The courts of first instance, in our opinion, should frame their decrees so as to carry out the processes of desegregation as soon as reasonably possible under the conditions which those courts may find to exist in the areas of their jurisdiction.

It is difficult, if not impossible, for us to argue on the facts that exist in the current cases before the Court, and we are only fully acquainted with the facts as they exist in the State of Maryland, which, however, we feel are so analogous to those existing in the States involved in the instant cases that an argument based on the situation as it exists in the State of Maryland would be a valid and compelling one, if otherwise sound. Maryland is a State with a long tradition of the operation of its public schools on a basis of

segregation by race. The State Constitution has provided for the education of both the white and colored races since 1867, and the Maryland statutes, under which the school system operates upon this basis, will be found in the Appendix at pages 72, 73. Maryland has made considerable progress in the education of the Negro, and it is completely true that in Maryland today educational facilities are equal although separate — equal in physical fact and not by law alone or in theory only. As a matter of fact, in some respects, the State of Maryland has shown less discrimination against its Negro students and educators than certain other States in which segregation has been illegal for many years. This shows up particularly with respect to teaching personnel. Maryland, with a population of 2,350,000 has over 2,900 colored school teachers for a non-white population of 388,000; whereas, New Jersey, for example, with a population of 4,835,000, has only 645 colored teachers for a non-white population of 324,000 and Connecticut with a population of over two million has, we are informed, fewer than 100 colored school teachers. Other indications of this situation may be found as referred to in the so-called Ashmore Report, "The Negro and the Schools", The University of North Carolina Press, 1954; which is undoubtedly well known to every member of this Court.

The University of Maryland has been operating on a non-segregated basis in its graduate schools for a number of years, and has recently begun to admit Negroes to its undergraduate courses. The State of Maryland has been spending in excess of $200,000 annually for scholarships for Negroes to out-of-State institutions offering courses which were not available to them at the University of Maryland until this year, and one effect of the Supreme Court's opinion followed by the desegregation of the University has been to

eliminate the granting of any further scholarships of this nature (Statement of Trustee Committee on State Scholarships, July 7, 1954, App. 70). The State further operates Morgan State College, which was designed primarily as an institution of higher learning for Negroes, but which has of recent years admitted white students also who care to attend that institution. So much for the situation with respect to higher education.

In the City of Baltimore, the public school system has begun the process of desegregation with the Fall Term of 1954, and the documents under which such program was instituted will be found in the Appendix at pp. 47 et seq., with, on the whole, a great deal of success, although some difficulties have been encountered.

In the Counties of Maryland outside of the City of Baltimore, the situation is extremely varied. Maryland has been called "America in Miniature", the aptness of which is certainly indicated by the figures on population and school attendance. The Court is respectfully referred to the population map at page 45 in the Appendix, from which, it may readily be seen that the percentage of Negro population varies from practically zero in Garrett County to almost fifty per cent in Calvert County, there being as much difference in this respect between these two Counties as there is between Maine and Mississippi. There are eight Counties with less than ten per cent Negro population; five with from ten to twenty per cent; six with from twenty to thirty per cent; and four with from forty to fifty per cent. Further, the existing public mores, ways of life and established patterns of thinking vary, probably, to a greater degree than the population statistics, although it must be reiterated, in every County substantially physically equal facilities have been provided for Negro students, and in most

of the Counties the facilities provided for the Negro students are superior physically, because newer, than those provided for white children. The tables in our Appendix indicate better than anything we can say the situation with respect to the various problems involved, namely, school population, teaching personnel, school buildings and bus transportation, all of which are factors which must be considered in any survey of the factual situation. It will be seen from a reading of the entire Report to the State Board of Education and the Attorney General of Maryland by the School Superintendent's Committee (App. 1) that the authorities in the field of public education in the State of Maryland are in favor of a peaceful implementation of the Court's decree, whatever form it may take, and they have made what we strongly urge the Court to accept as proper recommendations for the processes of change.

We believe that if left alone to devise in good faith a timetable for the desegregation of every school in Maryland, the local authorities will best be able to solve this problem with the fewest possible ill effects. Unfortunately, all Maryland thinking is not along these lines. Undoubtedly, at the next session of the Maryland Legislature, there will be a deluge of bills and proposals, petitions and propositions, urging everything from the abolition of the school system in its entirety to the election of school teachers by popular vote. The Attorney General of Maryland has received hundreds of letters of varying degrees of literacy upon this subject, all containing suggestions as to what ought to be done.

Two of the more serious attempts to circumvent or defeat this Court's decision are exemplified by two of the inclusions in our Appendix, namely, the so-called "West River Proclamation" (App. 62, 63), which was issued by an

earnest and intelligent group of parents of school children in one of the Counties of Southern Maryland. Another example is the petition which has been circulated by the so-called "Maryland Petition Committee", and which already has thousands of signatures appended thereto. A copy of this may be found in the Appendix at page 63. These two documents illustrate the point of view of what might be called the "upper brackets" of anti-integration. Other suggestions go all the way down the line from the type of action indicated by these two inclusions in our Appendix to outright demand for blood and the reactivation of the Ku Klux Klan. On the other hand, there are those who are in favor of immediate integration and even in favor of the establishment of hard and fast school districts, and the requirement that all pupils must attend a particular school regardless of their or their parents' choice in the matter. This has never been a practice in the State of Maryland, and all children have always had a choice of schools and there has been no arbitrary districting except in cases of serious overcrowding. The above point of view is represented by the data to be found in the Appendix at pages 64 et seq., arising out of a conference of Negro educators at Morgan State College on June 19, 1954. This also earnest and intelligent group has apparently studied the problem carefully but has, as may be seen from the data in the Appendix, reached utterly different conclusions, not only from the anti-integrationists, but also from what may be called the middle view taken by the school authorities in the City of Baltimore, as is indicated by the message of the School Superintendent to Teachers of June 14, 1954, to be found in the Appendix at page 52. We are inclined to urge the latter view as the best authority when coupled with a reasonable time schedule, remembering always that what may be done in one County without perceptible effect, could not be done

in another County at the same time without grave danger of serious public disorder and personal violence.

It has not been difficult to find judicial authority for the proposition stated in the argument above concerning the equity powers of the courts. However, in arguing the second question, we are removing ourselves from the area of the "is" to the area of the "ought to be". We are transporting our argument from the field of law to that of psychology, sociology and public relations. However, it is no new thing to state that this Court should not place itself in the position of attempting to engage in the administration of any public school system. As was said by this very Court in the case of *Minersville School Dist. v. Gobitis*, 310 U. S. 586, 84 L. Ed. 1375, at 1381:

> "* * * But the courtroom is not the arena for debating issues of educational policy. It is not our province to choose among competing considerations in the subtle process of securing effective loyalty to the traditional ideals of democracy, while respecting at the same time individual idiosyncracies among a people so diversified in racial origins and religious allegiances. So to hold would in effect make us the school board for the country. That authority has not been given to this Court, nor should we assume it."

Just as soon as this Court decrees "an effective, gradual adjustment", the timetable and the methods to be used to accomplish such "an effective, gradual adjustment" become a matter of school administration, and we respectfully urge that this Court, or any court, should only intervene where school administrators on the local level can be shown to have failed to exercise good faith and reasonable diligence to that end. We further believe that the cases before the Court should be remanded to the courts of first instance

with as few specific instructions as possible, except to frame decrees so as to permit the "effective, gradual adjustment", with, of course, a right of review of their actions in such matters by this Honorable Court, if necessary by the continuing supervision of these particular cases. It is further respectfully urged that the courts of first instance, in the cases at bar, and also other nisi prius courts in which similar cases may be pending, or in which similar cases may be filed in the future, be guided by principles substantially similar to those recommended in the Report included in the Appendix at page 10, i.e.:

1. The Courts should enforce the constitutional right of any child to attend the school of his choice within reasonable limits, and this right must not be impaired because of race or color.

2. The Courts should recognize that they are not school boards or administrative bodies at any level. Their function should be judicial and not administrative.

3. The Courts should take into consideration in enforcing the rights of one citizen, or a class of citizens, the possible effect of such enforcement upon the rights of other citizens.

4. The Courts should take into consideration the good faith and intentions of those with a desire to accept the Court's decree and charged with the difficult job of carrying out the process at a level dealing with human minds and bodies and not with abstract principles, however lofty, and these administrators must, therefore, not be hampered by unnecessary restrictions.

5. The Courts should take into account the motives of those who, in the future, may bring actions to enforce the rights established by this Court's decision.

In any event, this amicus curiae and the educational authorities of the State of Maryland stand together in one respect at least, and that is that, under no circumstances should little children of any race be used as guinea pigs in experiments to support or destroy anyone's social theories. The purpose of an educational system is to educate, and there can be no sound reason, in the operation of a sound educational system like that of Maryland, to operate so as to arbitrarily create integration any more than to create segregation. As a matter of fact of which this Court is probably well aware, school segregation has been well on its way out long before this Court acted in the present cases. We cannot express this feeling better than in the words of Harry S. Ashmore in "The Negro and the Schools", at page 135:

> "Finally, there is the hard fact that integration in a meaningful sense cannot be achieved by the mere physical presence of children of two races in a single classroom. No public school is isolated from the community that supports it, and if the very composition of its classes is subject to deep-seated and sustained public disapproval it is hardly likely to foster the spirit of united effort essential to learning. Even those who are dedicated to the proposition that the common good demands the end of segregation in education cannot be unaware that if the transition produces martyrs they will be the young children who must bear the brunt of spiritual conflict."

We do not want spiritual conflict in our school children, nor do we yearn to create martyrs. We do want to preserve public peace and order and, at the same time, continue the excellence of the school system which Maryland has enjoyed for many years, and as was said in the Report

to the Governor of North Carolina by the Institute of Government of the University of North Carolina, at page 38:

> "Law and order is an achievement of men and women and not a gift of the gods. It must be affirmed or lost in every generation."

Good public schools are likewise an achievement and not a gift and it is to preserve these achievements that we respectfully urge the Court that time, understanding and education of the public are necessary to solve the great problem which has been created by the decision in the instant cases, and we, therefore, urge that this Court so frame its decree as to leave the determination of the "how" and the "when" at the lowest possible local level administratively, if possible, and judicially, if necessary.

CONCLUSION

It is, for the reasons stated in the argument, respectfully submitted to the Court by this amicus curiae, that this Court so frame its decree as to answer the questions propounded in the manner in which we have indicated.

Respectfully submitted,

EDWARD D. E. ROLLINS,
Attorney General of Maryland,

W. GILES PARKER,
Assistant Attorney General of Maryland,

JAMES H. NORRIS, JR.,
Spec. Asst. Attorney General of Maryland.

APPENDIX TO AMICUS CURIAE BRIEF OF ATTORNEY GENERAL OF MARYLAND

I.

REPORT

TO

THE STATE BOARD OF EDUCATION

AND

THE ATTORNEY-GENERAL OF MARYLAND

FOREWORD

This report combines the findings and recommendations of individuals, and committee groups, who have—

(1) studied the recent opinion of the Supreme Court with respect to segregated school systems, such as exist in the twenty-three counties of Maryland;

(2) gathered pertinent data; and,

(3) developed statements of principles for consideration by:

THE STATE BOARD OF EDUCATION
and
THE ATTORNEY-GENERAL OF MARYLAND

WILLIAM S. SCHMIDT,

Chairman.

Acknowledgment is due many individuals in the preparation of this report. As chairman of the Superintendent's Committee on Desegregation of the Public Schools of Maryland, I wish to express my gratitude first to the members of my committee,

Mr. James M. Bennett, Superintendent of Schools, Wicomico County,

Mr. William M. Brish, Superintendent of Schools, Washington County,

Mr. Reade W. Corr, Superintendent of Schools, Kent County

and

Mr. John H. Fischer, Superintendent of Schools, Baltimore City,

who assisted me so ably in the gathering of data and the drafting of statements of general principles, as well as, through their critical reading of the preliminary report.

The Committee is indebted especially to our State Superintendent of Schools, Dr. Thomas G. Pullen, Jr., to Mr. W. Giles Parker, Assistant Attorney-General of Maryland, and to Mr. Paul E. Huffington, State Supervisor of High Schools, for their invaluable contribution of thought, and their wise counsel. The Committee also wishes to acknowledge the help of all others who had a share in gathering and compiling the data upon which this report is based.

As chairman, I wish to express my appreciation to a member of my professional staff, Miss Rowannetta S. Allen, for her assistance in editing and combining the several reports received.

Maryland has always been considerate of its colored population. As a matter of fact, the State was considerate of the Negro race when most of its representatives within the confines of the State were not citizens but slaves. The most eloquent testimony of this fact is that in 1861 the number of Negroes in Maryland was about equally divided between freed men and slaves. In its Constitution of 1867 the State provided for the education of both the white and colored races. True, it did provide for the education of both races in separate schools, but this was the accepted pattern of the day.

Elsewhere in this report is a summary of the progress that has been made in the education of the colored race in Maryland from 1867 through 1954, a period of nearly a century. Progress has been phenomenal. It is not the purpose of this report to belabor this particular point; facts and figures are cited merely to prove the good will and intent of the State of Maryland toward all its citizens.

On May 17, 1954, the Supreme Court of the United States rendered an opinion to the effect that the continuation of segregated schools is unconstitutional, and it invited the attorneys general of the various states affected to present briefs to the Court in the capacity of "amici curiae" suggesting procedures by which segregation of schools could be eliminated most satisfactorily and to guide the Supreme Court of the United States in drawing up its final decree.

The State Board of Education held its first meeting following this decision on May 26. The Board was advised by Attorney-General Rollins that the Supreme Court had issued only an "opinion" not a final decree.

It should be noted that the Attorney-General of Maryland, while not objecting in any sense to the opinion and to the forthcoming decree of the Supreme Court, notified the State and local school authorities of Maryland that in accordance with the laws of the State it would be necessary for them to continue segregation in the schools and teachers colleges of the State until such time as a final decree was transmitted or until such time as the Legislature of the State might repeal its laws requiring segregation.

Particular attention should be called to the fact that the Attorney-General of Maryland accepted the opinion of the Supreme Court as being just and equitable and publicly affirmed his willingness to assist in the desegregation of the schools of the State in accordance with due process of law and the decree of the Supreme Court of the United States.

Especial attention is called also to the fact that the State Superintendent of Schools has accepted the decision of the Supreme Court and has indicated his willingness to imple-

ment desegregation to the best of his ability and to the limit of the powers of his office. Further, the State Board of Education, at its meeting on May 26, took the position that the final judicial authority of the land had spoken and that it would do all within its power to implement the decision of the Court's decree when it is finally passed. (For the record, a copy of the statement of the State Board of Education is included in this brief.)

This action of the State Board was followed by a meeting of the school superintendents from the twenty-three counties and Baltimore City with the Attorney-General and other state officials. At that time, Dr. Thomas G. Pullen, Jr., State Superintendent of Schools, announced the appointment of a five-man committee of superintendents to (1) work closely with the State Department of Education and the Attorney-General's Office on the collection and preparation of data to be used in the presentation of Maryland's brief to the Supreme Court in October, and (2) to draw up a broad general statement of principles to be used by local boards of education as guiding principles for implementing the Supreme Court decision "that will be fair and equitable through the state" and impair no individual rights.

In compliance with this assignment, the committee divided itself into two sub-committees: one studied and considered the general guiding principles; the other conducted the survey and compiled data regarding the present status of our segregated schools.

Very early in its work, the committee discovered that one of its functions would be to advise the Attorney-General on the arguments to Questions 4 and 5 which the Supreme Court had propounded for reargument in the October 1954 session. These questions are: (4) "Assuming it is decided that segregation in public schools violates the Fourteenth Amendment,

(a) would a decree necessarily follow providing that, within the limits set by normal geographic school

districting, Negro children should forthwith be admitted to schools of their choice, or

(b) may this Court, in the exercise of its equity powers, permit an effective gradual adjustment to be brought about from existing segregated systems to a system not based on color distinctions?"

In search for the answer to this question, the committee was governed by the returns on its questionnaire circulated to the superintendents of the twenty-three counties of the State, and to the Superintendent of Schools of Baltimore City. In a majority of the counties the returns indicated that the most acceptable method for ending public school segregation would be by a gradual transition period. In support of this position, the committee offers the following statements:

(a) Since 1870, Maryland has operated a segregated system of public education. The adherence to the Plissy v. Ferguson doctrine of "separate but equal facilities" since 1896 has created in many counties a duplication of facilities, personnel and administrative practices which, if abruptly discontinued or ignored, could create much unrest and confusion and ultimately result in unnecessary harm to children and youth.

(b) Few, if any, of the county units are prepared for a sudden changeover if integration should be made a mandatory requirement. Workshops in Human Relations on a bi-racial basis need to be instituted at all levels; i.e., pupil, teacher, administrator and parent. The hopeful outcome of such planning and preparation would be to identify any problems and tensions which now exist, and to develop, through cooperative endeavor, techniques and procedures for solving these problems and for relieving the tensions. An orderly transition would be a more certain way of improving inter-racial understanding than to summarily implement the desegregation of the public schools.

(c) The wide variation which exists in the number and percentage of Negro pupils in the different counties of Maryland makes obvious the view that the counties in the State vary in their racial composition as Maine varies from Mississippi. In four or five counties the transition would possibly create few, if any, problems at all as the number of Negro pupils affected totals less than 500. In all other units the total of Negro pupils involved is considerably larger and the percentage in one county exceeds 50% of the total school enrollment. It is apparent that with such differences it is desirable that the counties within the State be permitted a gradual period of transition consistent with local conditions.

(d) The canvass of the counties also indicates that there is considerable variation within a county. One county specifically noted that desegregation would affect four communities within that county. While little or no opposition or tension would be manifest on a county-wide basis, citizens in the affected areas have indicated a preference for a gradual period of change from segregation to integration. This condition can be duplicated in nearly every unit where there is a concentration of Negro population.

For these reasons, the committee urges the Attorney-General of Maryland to argue for a "gradual adjustment" as the counties move from a segregated system "to a system not based on color distinctions". As stated above, the variation among states having segregated schools; the variation existing in Maryland as reflected in Garrett, Allegany and Washington Counties with the region of Southern Maryland and the Eastern Shore Counties; the variation within a given county; compel us to suggest that any time limit recommendation be flexible enough to provide for local adaptation to the final decree of the Court. If it please the Court to issue such a decree, it may be argued by some protagonists that indefiniteness is an invitation to endless court litigation and confusion. In fact, some have already

argued that "gradual adjustment" will be nothing short of a dodge — "a law of compliance which permits state officials to do nothing at all whenever they are of a disposition to do nothing". In rebuttal, the committee would call to the attention of the Supreme Bench the expressed intent of public officials of Maryland, who would be charged with the responsibility of carrying out the Court's decree, which appear earlier in this document. The committee would also wish to impress upon the honorable judges the fact that the process of desegregation will be carried out with the same good will and spirit — which have always characterized the application of the law in Maryland. The long and honorable record of Maryland as a member of the Union attests to the integrity of this statement. However, it may be argued that the moment a state or county ceases to operate a system providing enforced separation of *every* Negro child from *every* white child solely because of race, it has begun an action aimed to guarantee to every citizen his, or her, rights existing under the Fourteenth Amendment to the Constitution, as recently interpreted by the Supreme Court.

Any decree of the Supreme Court as to the procedure to be used in desegregation, we believe, should take into due consideration the good faith, fair-mindedness, and civil integrity of the people who will be affected, as well as, the profound and sweeping changes involved. The court's decision (May 17, 1954) will inevitably affect the entire school system of the State in the areas of administration, expenditures, allocation of pupils and teachers, construction of school facilities, and other related services. It may even necessitate a revision of state laws. We believe that changes of this kind, involving extensive reorganization, and the mores of society, to be successfully and soundly established, must be based on intelligent, considered action in the light of both fortunate and unfortunate eventualities, of both positive and negative reactions. In the judgment of the committee it would seem better to *plan* and *prepare* the way thereby creating a readiness which would assure success.

The Supreme Court in abolishing segregation in the public schools of this country created a new right for a minority group. By the same action it abrogated a right of the majority group. It is specious to argue that this right of the majority did not exist legally; it has been countenanced as a right for nearly a century and the Supreme Court on one memorable occasion placed its official sanction upon it. Pragmatically, then, the right of the white people in any given state, under the approval of its state laws, to send their children to segregated schools has existed. More important than any other consideration is the fact that the citizens of the several states practicing segregation in their schools have thought they had this right and their thinking and their attitudes have been conditioned by this fact.

The Supreme Court, in rendering its opinion to the effect that the operation of segregated schools by any state or local community is unconstitutional, strongly emphasized the psychological disturbances in Negro children due to this policy of excluding them from schools for white children. Supposedly, and conversely, the mixing of children, white and colored, will eliminate this emotional disturbance on the part of Negro children. Assuming for the purposes of this discussion that the premise has validity, although the problem is not quite so simple, by the same token it is reasonable to expect that integration will cause emotional disturbances in those white children who have lived in a segregated world with as clear a conscience as that of the English, Dutch, and New England slave traders who brought the Negroes to America for financial gain. Without implying criticism of the Court on this point, it might be said that justice—we are not referring to mercy—has no concern with the purely psychological. Justice is concerned solely with rights and privileges — moral or legal.

But since the psychological disturbances of Negro children have been considered in creating this new right for them, the Court should bear in mind the emotional disturb-

ance it is creating in white children by revoking the pre-existing right. The practical application of this point is that this factor should be taken into consideration in deciding upon the final decree.

The second question (#5) propounded by the Supreme Court and, in turn, directed to this committee for a recommendation is stated as follows:

"5. On the assumption on which question 4(a) and (b) are based, and assuming further that this Court will exercise its equity powers to the end described in question 4(b),

(a) should this Court formulate detailed decrees in these cases;

(b) if so, what specific issues should the decrees reach;

(c) should this Court appoint a special master to hear evidence with a view to recommending specific terms for such decrees;

(d) should this Court remand to the courts of first instance with directions to frame decrees in these cases, and, if so, what general directions should the decrees of this Court include and what procedures should the courts of first instance follow in arriving at the specific terms of more detailed decrees?"

The reply to these questions is a legal one with many different answers. These questions ask: Who will decide the exact and precise steps to be taken in abolishing segregation? Who will decide when the process is to begin? Who will decide how the process will proceed? These and many other questions must be clarified before the Supreme Bench issues its final decree.

It was the considered judgment of the committee that the Attorney-General of Maryland should be requested to plead for the remanding of all cases involving segregation

to courts of the first instance (lower courts) with instructions to them to devise a program for implementing the Court's opinion of May 17. This decision was reached because of our belief that it is not proper for the Supreme Court to involve itself in the administration of the public schools.

In the light of the foregoing, the following statement of principles to guide the State and local school authorities in Maryland would seem appropriate:

1. The primary concern of the Supreme Court is to guarantee that the right of no child to attend the school of his choice be impaired by reason of race.

2. The Supreme Court is not an administrative body on the Federal, State, or local level. Its function is judicial, not administrative.

3. The Court, in setting forth the condition under which its decree is to be implemented, should take into consideration the same psychological disturbances which were one of the bases for its decision.

4. The Supreme Court, in setting forth the conditions of implementation, should recognize the good faith of those who accept its decree and not inhibit them with undue restrictions.

5. The Supreme Court should be mindful of the fact that public education is the responsibility of the several states, and that they are accountable to no Federal agency or court except as they may infringe upon the rights guaranteed citizens by the Constitution.

6. The Supreme Court would be less than fair to those who are entrusted with the task of implementing its decree unless it defined a "non-segregated school". Are the terms "non-segregated" and "integrated" synonymous? Is non-segregation a legal fact only if there is a close relationship between the ratio of races in a school to the racial composition of the com-

munity? Would the practices in the states where segregation is already illegal be accepted in Maryland as satisfying the decree of the Supreme Court?

The following recommendations are made only with the unique problem in Maryland in mind.

Under the laws of Maryland "The State Board of Education shall exercise, through the State Superintendent of Schools and his professional assistants, general control and supervision over the public schools and educational interests of the State; . . .", and "The county board of education shall exercise through its executive officers, the county superintendent, and his professional assistants, control and supervision over the public school system of the county." Other sections of the law state that "Educational matters affecting the State and the general care and supervision of public education shall be entrusted to a State Department of Education, at the head of which shall be a State Board of Education", and "Educational matters affecting a county shall be under the control of a County Board of Education".

It should be apparent from these and other laws that the State Board of Education is entrusted with general oversight and supervision of the public schools of the State, but that the actual operation of schools, including specifically such matters as the assignment of pupils, consolidation of schools, and the appointment and dismissal of teachers, is the responsibility of the local (the several counties and Baltimore City) school systems.

It should be obvious then that the functions of the two divisions of administrative authority are different. Briefly and simply, the functions of the State Department of Education, acting under the State Board of Education, are supervisory; and those of the local school systems are operational. In the implementation of the decree of the Supreme Court, the statement made by the State Board of Education at its meeting on May 26, 1954, clearly defines the respective duties and functions of the two authorities.

The following is an excerpt from the statement of the State Board, and the amplifying and clarifying principles are added:

> "The role of the State Board of Education is not to set the detailed pattern of operation but to take an official position that the decision will be implemented with fairness and justice to all, and with due regard for the professional aspects of the program. Further, its responsibility is to act in a general over-all supervisory nature to insure that standard, equitable, practices are followed throughout the State."

In the opinion of the Committee the State Board of Education would be acting within the scope of its authority and in line with its responsibility if it should agree upon the following set of general principles, including possibly others, regarding the implementation of the decree of the Supreme Court.

It should state clearly and unequivocally to the local school authorities and the public the effect of the decree of the Supreme Court and of its (the State Board's) intention to exercise whatever authority it may have to guarantee that the decree is implemented fairly, honestly, and intelligently:

1. The administration of the public schools in Maryland is the responsibility of the county and city boards of education. Practices locally must be consistent with the laws of the State and the by-laws of the State Board of Education.

2. By law the consolidation of schools is the responsibility of the county and Baltimore City boards of education. The State Board of Education has no initiatory powers with respect to consolidation, it does have the right of review upon appeal.

   Likewise, the county boards of education have the responsibility for assigning children to schools. The

only inhibitory condition placed upon the county boards in the assignment of children is that race shall not be a factor in the decision.

3. In consolidating schools and in assigning children to schools, no county board may deny any child a right enjoyed by others.

4. Coercive measures should not be employed; that is, no child should be compelled to attend a particular school, rather, he should be given a choice. This position is more or less consistent with the pattern now employed in the several school systems of the State with respect to white children attending white schools and colored children attending colored schools.

5. Each county and Baltimore City should study its own situation and decide upon a plan to be put into operation within that system. The policy determined should be uniform throughout the system.

6. Certain cases of individuals who might believe themselves to be discriminated against could be appealed to the State Board of Education; others would have to appeal to the courts.

7. State funds are distributed to the counties and Baltimore City contingent upon the faithful adherence to the school laws; otherwise these funds can be withheld.

8. Due to different conditions, professional and social, the change from segregated schools to non-segregated schools will be more rapid in some local systems than in others; the change should be gradual but as rapid as possible.

While the local school systems are governed in a general way by the supervisory authority of the State Board of Education, they possess a considerable degree of autonomy. This autonomy, in effect, permits them to accept or reject certain actions suggested by the State Board, in certain

aspects of operation, however, the coercive authority must be accepted. In the field of simple administrative procedure, the autonomy of the local board is quite clear. As local school systems vary greatly in their problems it would be exceedingly unwise and futile for either the Court, or the State Board of Education, to make detailed suggestions for implementing the program of desegregation within the counties of the State.

If the committee's reasoning is correct the inauguration and implementation of desegregation in the schools of Maryland will constitute an involved and time-consuming process. It was our hope that we might be bold enough to suggest a possibility for the carrying out of the Court's opinion. Would it not be feasible to suggest to the Court that it provide for the principle of "gradual adjustment" and that it leave great discretion to responsible state and county school authorities and the legal department of the several states to devise ways and means for putting the program of desegregation into effect? We believe because of the argument previously presented, that these responsible school authorities should have the first opportunity to devise and inaugurate a plan, reasonable, fair and just, to implement the opinion of the Court. We believe that such action on the part of the Court would reaffirm our great faith in the wisdom and integrity of our State and local county boards of education and their executive officer — the superintendent of schools.

For that reason, the following set of principles for the local school systems, would seem appropriate:

THAT the County and Baltimore City Boards of Education, solely responsible for the operational phases of the local units of the public school system of the State, plan for desegregation on the basis of morally, legally, and administratively sound principles. In the opinion of the Committee those principles should be a clear delineation to the public of the implications of the decree of the Supreme Court.

THAT each local school system should develop a program of action based upon a thorough and comprehensive study of the local situation designed with due regard to the rights of every child and after consultation with representatives of both races. It might be remarked, parenthetically, at this point that such studies have already been inaugurated in many of the local units in Maryland.

THAT each local school system should develop a program of action that takes into proper consideration the psychological and other factors, both detrimental to and beneficial of, the orderly process of desegregation. In effect, application of this principle means simply that desegregation may be more rapid in some local school systems than in others. but it does not mean that no step in that direction may be taken by any local system. It does mean, however, that no uniform rigid pattern of desegregation can be followed statewide in Maryland.

THAT each local school system should keep in constant contact with proper authorities, educational and judicial, for review of actions taken as to their professional and legal appropriateness.

THAT the attitude of the local school authorities should not be one of aggressive advocacy but rather one of calm, fair administrative justice.

THAT the local school board should exercise all the leadership of which they are capable in bringing about an orderly implementation of the decree of the Supreme Court.

THAT in their procedure of implementation, the local school authorities making public utterances should be mindful not to make careless statements which will inflame the public. On the other hand, the local school officials should be clear, frank, and meticulous in informing the public of the detailed steps they intend to take in carrying out the program of desegregation.

In summary, the committee advocates a policy of gradual adjustment and remanding of responsibility for implementing the decree to the local school authorities. Legal opinion would seem to indicate that the issues to be treated in moving from segregation to desegregation are not within the conventional experience of the judiciary. The state and local agencies which have been established to cope with such problems should be afforded the first opportunity to work out on a bi-racial basis the procedures for meeting the new principles of law as contained in the Court's decision of May 17.

Our adherence to this position is based on our desire to build at the local level in our respective counties a climate of good will between all parties concerned. This climate is necessary to undergird the program of action which must be organized to carry out the opinion of the Court. We recommend to the several counties the formation of Citizens' Committees appointed by the local board and consisting of representatives of both races, who will consult with the local educational authorities on the steps to be taken in each county, the progress of desegregation, and the setting up of safeguards for the protection of the rights of all children. Following such a democratic procedure the people will feel that they have had a part in this program if the authority and responsibility for implementing the course of action is arrived at through citizens' advisory groups working in cooperation with local boards of education to devise the appropriate administrative policies. It is our further belief that this program will need the sympathetic understanding of all citizens, if the decision and resultant course of action are to be freed of emotional outbursts. Imposition of the specific directions at a level of government detached from the people will only add suspicion and confusion to an issue highly charged with emotionalism. The very nature of our democratic life implies that we approach this problem with an attitude of trust and a determination to develop a satisfactory answer to our immediate problem.

The essence of democracy lies in the local community; its manifestations are in the light of local tradition and thought. Mere edict from above will not change thinking nor the attitudes which influence human behavior; although its power may be accepted. If respect for law and oruer, elementary justice, and good will toward every man are present, as we desire them to be in Maryland, then the Supreme Court may well decide that establishment of the principle of non-segregation is the primary concern of the nation for the moment, with the belief that each community will move as rapidly as possible to bring its practices in line with proper moral and legal principles. Coercive measures, particularly drastic and sudden ones, never settle issues; they often create new ones. However, proper restrictive measures properly employed could serve as a gentle prod to action in the desired direction.

Finally, it is but a truism to say that the means determine the end. The manner in which desegregation is put into effect in our state and in our nation will determine for many years to come the attitude of the races toward each other. Only through good will is good will engendered.

IV.

STATEMENT OF THE BOARD OF EDUCATION REGARDING THE SUPREME COURT DECISION OF MAY 17, 1954

"The Supreme Court of the land has spoken. It is the duty and responsibility of the State Board of Education to do all within its power to work out the problem 'seemingly and in order' and in such manner that the rights and priviliges of no individual are impaired by arbitrary or capricious methods.

Upon the advice of the Attorney General of Maryland, the decision of the Supreme Court and the full implications of the decision will not be made until some time in the fall after the Court has had a conference and further hearings

and arguments with the Attorneys General, and possibly other representatives from the various states which will be affected. Until the conditions of the decision are made known finally, with the mandate and decree of the Supreme Court, any detailed plan of action for implementation would be premature. This statement does not imply, however, that the State Board of Education and the local school authorities, upon whom the major burden of solving the problem will fall, should delay in analyzing the situation and making plans for implementing the decision of the Court.

The laws of Maryland specifically provide for segregation in the public schools and in the teachers colleges. In view of this law requiring segregation, no program of integration can be put into effect until the decision of the Supreme Court becomes final and an effective date is set by the Supreme Court.

The detailed problems in respect to implementing the decision of the Supreme Court will rest primarly upon the local boards of education. The problems involved in any program of integration will vary among the different school systems of the State, but we are confident that they will be solved in a fair, decent, and legal manner and with good common sense. Furthermore we are confident that the local school boards, the local school officials, and the parents will settle this problem without restorting to chicanery or devious methods and with due regard for the rights of all parties concerned. Any program of implementation will be based upon professional and human considerations and not with coercive designs or methods. The public school system of Maryland has always been known for its high professional attitude and for its unbiased and unprejudiced treatment of all children.

The role of the State Board of Education is not to set the detailed pattern of operation but to take an official position that the decision will be implemented with fairness and justice to all, and with due regard for the professional aspects of the program. Further, its responsibility is to act

in a general over-all supervisory nature to insure that standard, equitable practices are followed throughout the state."

May 26th, 1954.

III.

A SURVEY OF NEGRO EDUCATION IN MARYLAND

Since the early days of the State's history, Maryland has had a relatively large Negro population. In 1790, the year of the first Federal census, Maryland's total population was 319,728, of which 65.3 per cent were white and 37.7 per cent were Negro. The maximum proportion of Negroes to white was reached in 1810, with 38.2 per cent, with a gradual decrease, decade by decade, until in 1950 the Negro population comprised but 16.5 per cent of the total.

The following table gives the racial population since 1890.

Population of Maryland by Races*

Year	*Total Population*	*White*	*Per Cent*	*Negro*	*Per Cent*
1890	1,042,390	826,493	79.3	215,657	20.7
1910	1,295,346	1,062,639	82.0	232,250	17.9
1930	1,631,526	1,354,226	83.0	276,379	16.9
1950	2,329,263	2,343,009	83.5	385,972	16.5

* U. S. Census Bureau Reports.

A. Public School Education for Negroes

In any study of the status of Negro education in Maryland, two or three basic factors and conditions should be mentioned. The first of these has to do with the varied population patterns among the counties and the metropolitan areas of the State. The northern and western counties have very sparse Negro populations; in fact, there are no Negroes of school age in Garrett, the mountainous, western-

most county of the State. The concentration of population increases from less than two percent in Western Maryland to approximately 25 per cent in the Southern Maryland and Eastern Shore counties and in Baltimore City.

The second factor has to do with the State's geographic location and socio-economic life. Maryland's varied topographic features, socio-economic patterns, and racial groups are some of the reasons why the State is frequently referred to as a "miniature America." Although it is a border state, many of its customs and traditions have linked it with the South. In fact, life in some areas of Southern Maryland and the Eastern Shore is similar in many respects with life in areas traditionally characterized as "the deep South." The highly industrialized Baltimore City area has attracted large numbers of people, both white and Negro, many in the unskilled labor category, chiefly from the South. Similarly, because of employment opportunities in government and related service fields, a tremendous concentration and expansion of population of both races is characteristic of the Washington suburban areas.

The third factor concerns the impact of the above noted population trends and patterns upon the school enrollments in the counties and in Baltimore City. These enrollment figures are shown in the table below:

Maryland Public School Enrollment by Color:
1923-1953

A. State Enrollment

Year Ending June 30:	*Total Enrollment*	*White*	*Per Cent*	*Colored*	*Per Cent*
1923	256,546	208,023	81.1	48,523	18.9
1933	285,519	228,071	81.3	52,448	18.7
1943	279,842	222,596	79.5	57,256	20.5
1953	399,050	314,916	78.9	84,134	21.1

B. Baltimore City Enrollment

Year Ending June 30:	Total	White	Per Cent	Colored	Per Cent
1923	104,072	87,066	83.6	17,006	16.4
1933	113,039	89,251	79.0	23,788	21.
1943	105,212	75,309	71.6	29,903	28.4
1953	131,854	84,498	64.2	47,356	35.8

C. County Enrollment — All Counties

Year Ending June 30:	Total	White	Per Cent	Colored	Per Cent
1923	152,474	120,957	79.4	21,517	20.6
1933	167,480	138,820	82.9	28,660	17.1
1943	174,640	147,287	84.2	27,353	15.8
1953	267,196	230,418	86.1	36,778	13.9

Maryland Public School Enrollment — Colored Pupils: 1923-1953

Year Ending June 30:	Total State			Total Counties			Baltimore City		
	Total	Elem.	High	Total	Elem.	High	Total	Elem.	High
1923	48,523	46,745	1,778	31,517	31,070	447	17,006	15,675	1,331
1933	52,448	47,193	5,255	28,660	25,944	2,716	23,788	21,249	2,539
1943	57,256	48,699	8,557	27,353	22,170	5,183	29,903	26,529	3,374
1953	84,134	57,877	26,257	36,778	23,631	13,147	47,356	34,246	13,110

Historically, Negro education in Maryland has followed the social and economic trends of our country's development. During the Revolutionary War period, benevolent attitudes were prevalent, especially on the part of many statesmen and churchmen; education was favored, and many Negroes became tradesmen, artisans, and clerks. Maryland early developed a favorable attitude toward the education of Negroes as evidenced by the establishment in Baltimore in 1797 by the Maryland Abolition Society of "An Academy for Children of Africans."

With the invention of the cotton gin, the extension of the plantation system southward, and the expansion of slavery, the first half of the nineteenth century was a period of strong reaction against education of Negroes, with legal restrictions in the South and segregated schools for Negroes in the northern states.

During the hectic reconstruction period following the Civil War, Negro education gradually became accepted and extended, with special help from church groups, philanthropic foundations and the Freedman's Bureau. By 1900, the Negro had achieved his legal right to education in all states, but with segregation the pattern in the South and border states.

Maryland is particularly fortunate in the legal framework supporting the public school system. The State school system is made up of twenty-three self-governing local county units and Baltimore City, each under the leadership of professionally trained superintendents and supervisors, and each unit developing its own program in compliance with the State School of Law and under the leadership and support of the State Superintendent of Schools and his staff. The entire structure of the system rests upon legislation enacted from session to session to support and implement the 1867 Constitutional provisions for public education.* This section of the Constitution is the foundation for a State minimum program of education for every child in Maryland regardless of race, creed, color, or geographical location of his birth. This program makes provision, among other things, for:

1. A qualified teacher for every child
2. A twelve-year system of education
3. A minimum salary scale for teachers, principals, and supervisors

* Constitution of Maryland — Declaration of Rights and Articles III and VIII. Also Article 77: The Public School Laws of Maryland.

4. State assistance to local units in establishing a minimum pupil-teacher ratio.
5. Free transportation for all pupils who live beyond a reasonable and safe walking distance
6. Free textbooks and materials of instruction
7. A minimum school year of 180 days
8. Compulsory school attendance
9. Special non-teaching services to pupils
10. Additional financial assistance for atypical pupils
11. An incentive fund to assist local units in financing construction of school buildings
12. A system of teacher tenure and retirement

A brief review of some of the legislation and practices affecting the progress of Negro education will show the tremendous advances made, particularly in the last few decades, in the State's effort to provide adequate educational opportunities for its children and youth.

Separate colored schools were established as a part of the public school system in Maryland as a result of the enactment of Chapter 377 of the Laws of 1872. Every county had colored schools in operation for the school year 1872-1873. In 1918, four counties established high schools for their colored youth. The number increased gradually until by 1934 every county, with the exception of one county with no colored children, was providing and is continuing to provide high school advantages for its colored youth.

A. Supervision

An act of 1910 Maryland Legislature provided supervision of Negro schools in the counties and carried with it a State appropriation for the salary of the supervisor. This law was modified in 1916 to require that a county must have as many as ten Negro schools to receive the State appropriation.

In 1920 a by-law of the State Board of Education, having the force of law, fixed the minimum academic and professional qualifications of supervisors and required the State Superintendent's approval for their appointment.

The 1916 Legislature created the position of State Supervisor of Colored Schools, as a member of the State Superintendent's staff, restricting the appointment to a white person. This restriction, however, and the position were removed by later legislation. In 1947 the first Negro was appointed to the supervisory staff of the Department of Education, and there are now two members on the staff. Special supervisors in the Department have, since their appointment, rendered equitable and regular services to all schools without regard to color.

Legislation enacted in 1945 provided that each county employing 30 or more teachers must employ a colored person as supervisor of colored schools, and also provided part-time supervision in counties employing from 10 to 30 teachers, with no color restriction.

B. Teacher Certification

When certification of teachers became a State function, according to 1916 legislation, the same certification requirements were set for both white and colored teachers. As the certificate requirements were increased from time to time, those for colored teachers usually lagged by a few years but are now identical. As a matter of fact, the certification status of colored teachers has maintained a most favorable position. As early as the school year ending in June 1934, the county colored elementary teaching staffs of 704 members included 689, or 98 per cent, who held first-grade certificates. As certification requirements were extended first to three years' and then to four years' training, the colored teachers have continued to maintain almost 100 per cent full certification status at both elementary and high school levels.

C. Teacher Salaries

Maryland had no State-wide salary schedule for public school teachers prior to 1904, at which time the Legislature prescribed a minimum of $300 per year for white teachers. In 1918 a salary schedule for colored teachers was set up by the Legislature. This schedule was increased in 1920 and in 1922 legislation provided for increments for satisfactory service, with a maximum of $85 per month for the eight-month school year then required. Although other salary adjustments were made after the 1922 legislation, the most significant advance was made when the Legislature, in 1941, passed the law equalizing salaries of white and colored teachers, effective January 1, 1942. Maryland thus became the first state to equalize salaries. Equality in salary for all teachers with comparable training and experience has since been fully respected by all counties, including the payments of increments not specified by State law. From an examination of the data in Table 2, it will be noted that the average annual salary for colored teachers in the State in 1953 (the latest year available) exceeded that of the white teachers by $61 or $3996 for colored and $3935 for white teachers. This favorable status is accounted for through the generally longer tenure and higher certification ratings of Negro teachers.

D. Length of School Year

The minimum session for colored schools was fixed at 140 days, or seven months, in 1916, but the Legislature raised this to 160 days or eight months in 1922, and to the present 180-day minimum for all schools in 1937. See Table 3 for fuller details regarding length of school year.

E. Transportation and Consolidation

Consolidation of schools has developed at an accelerated pace during the last decade or two as modern highways and buses have aided transportation of pupils. The extent to which consolidation has taken place is shown in Table 4. From less than one per cent in 1923, transportation is now

provided for more than half of all colored elementary pupils (57.0%) and for nearly three-fourths (73.5%) of colored high school pupils.

Even more remarkable has been the consolidation of schools from the inadequate, often drab and sub-standard one- or two-room schools to the modern, functional school plants which now are provided generally for all pupils, regardless of color. The figures in Table 5 tell only a part of the story but the reduction from over 400 one-teacher schools to only 26 in three decades is partial evidence of the trend toward adequate facilities for the colored pupil. Further evidence is found in tremendously accelerated post-war building programs for Negro schools. From 1946-1953, inclusive, the total capital outlay for new schools or additions in the State amounted to $31,432,740, with every county and Baltimore City sharing in this cost. Based on the 1952-53 total State enrollment of 84,134 colored pupils, this capital outlay represents an investment of $374 per pupil in *new* facilities alone. This figure compares favorably with the value of school property per pupil, regardless of color.

F. Enrollment and Persistency Trends

With the expansion of facilities, the extension of transportation, the improvement of teacher qualifications, and the modifications in the school program, there have come marked changes in enrollment and persistency in schools for colored children. Certainly the greatest change has been the expansion of high school enrollment. We note a 73 per cent increase in elementary enrollment since 1923 and a 1380 per cent increase in high school enrollment. Overageness likewise was reduced from more than 65 per cent in 1921 to 11.8 per cent in 1949, the last year such studies were made by the State Department of Education. Persistency to high school graduation, while not keeping pace with enrollment increases, has improved remarkably and is now approximately 50 per cent — that is, one-half of all pupils enrolled in the 9th grade remain until graduation four years

later. The number of graduates in the county high schools has increased from 24 in 1923 to 1,086 in 1953 and the State total from 958 in 1933 to 1,912 in 1953 — a 100 per cent improvement in twenty years (See Table 6). Further examination of the data in this table will show the improved situation with regard to the extension upward into high school grades of very large numbers of our colored youth. For example, the ratio of high to elementary enrollment has been reduced from 1 to 27 pupils in 1923 to 1 to 2.2 pupils in 1953.

G. Miscellaneous Information Supporting Progress in Negro Education

It is generally conceded that the current expense cost per pupil is a fair index of educational opportunity. From this criterion, there is full evidence that the State is fulfilling its obligation of equal educational opportunity for all its children and youth. In 1953 the State per capita cost for elementary pupils was:

Colored pupils — $185.72	For high schools:	Colored	— $239.07
White pupils — $184.61		White	— $247.36

(See Table 7, for further detail)

The effectiveness of a school's program is in part dependent upon the number of pupils assigned to each teacher. State aid is given to counties on the basis of thirty pupils per teacher in the elementary school since this ratio is considered the maximum for optimum effectiveness. The ratio for high schools is somewhat smaller in view of the nature of the offerings. From Table 8, it will be noted that in recent years, especially, there has been little difference in the teacher-pupil ratio among the schools regardless of color. The counties, in particular, have been able to reduce class size nearly to the desired minimum. In 1953, for example, the ratio for colored elementary schools was 32 and for high schools 21.2

Another evidence of an improved educational program is the extent to which teachers take advantage of the in-service training opportunities offered them. Traditionally, the colored teachers of the State have taken full advantage of all programs designed to improve themselves professionally. Through summer schools, extension courses, workshops, and other such programs, teachers have been given full and equal opportunities. In recent years these programs in the various counties have been conducted for all teachers on an integrated basis. Indeed, one of the most promising advances has been the complete integration of local supervisory and administrative staffs to promote one program for all pupils in a particular unit.

Other evidences of continued progress in the public schools of the State include:

1. The appointment of a Negro member to the State Board of Education
2. The appointment of Negro members to various local Boards of Education
3. Removal of the color restriction concerning membership in the Maryland State Teachers' Association
4. Extension of programs of adult education on an integrated basis in the local units
5. Programs of Parent Education extended to County units
6. The appointment of Negro supervisors of pupil personnel in counties with large Negro pupil populations
7. Extension of vocational programs in home economics, agriculture and trade and industrial education in all high schools where enrollment justified without regard to color
8. Legal provision for *colored* supervisors in all county units with 30 or more colored teachers even though such restriction based on color is contrary to current interpretations.*

* Chapter 11, Section 142: Public School Laws of Maryland, Vol. 28, April '48, No. 2.

9. Proper distribution of all funds received from local, State, and Federal sources for educational purposes, without regard to color.

10. Adequate provision for buildings, equipment, and materials of instruction for every child in the State, regardless of color.

11. Uniform provision for related and supporting services to the educational program; e.g. school lunch, health, and library services, to all pupils without regard to color.

B. Higher Education for Negroes in Maryland

There are at the present time four Negro colleges in the State, all of which are under public control and state support. Two of these are State Teachers Colleges, operated under the State Board of Education, acting as their Trustees, one is a branch of the University of Maryland and the fourth is a liberal arts college with its own Board of Trustees. None of the Negro colleges have ever offered work beyond the under-graduate level. In 1950 a Junior College for Negroes was opened in Montgomery County, with some State aid, but operating under the County Board of Education.

Within the past few years, the rigid pattern of racial segregation in higher education has begun to relax. Since 1935, an increasing number of Negro students have been admitted to the School of Law of the University of Maryland, and to such private institutions as the Johns Hopkins University, Loyola College and St. John's College. During the current year 1953-1954, both graduate and under-graduate Negroes are enrolled in several colleges of the University of Maryland.

The State's interest in and support of higher education for Negroes are reflected in its investment for capital outlay and general fund appropriations to the Negro colleges. The figures for recent years are shown below:

STATE SUPPORT FOR MARYLAND NEGRO COLLEGES

Year	*Bowie State Teachers College*	*Coppin State Teachers College*	*Maryland State College*	*Morgan State College*
A. *Capital Outlay Appropriations — 1939-1953**				
1939	$ 30,000	—	$ 35,000	$ 122,000
1947	42,000	—	587,000	1,491,000
1949	750,000	—	865,000	1,669,170
1951	800,000	—	865,000	2,111,170
1952	—	—	—	—
1953	260,500	—	—	1,920,000
B. *Property Inventory — Buildings, Equipment and Land*				
1953	$1,720,843.88	$674,213.84	$2,506,689.03	$6,392,225.55
C. *General Fund Appropriations*				
1950-51	$187,531	—	$457,186	$639,041
1951-52	241,456	$70,000	495,807	822,083
1952-53	263,012	86,035	559,461	929,681

* Source: Reports of the Comptroller of the Treasury Construction and Property Inventories and Fiscal Digests of the State of Maryland.

SUMMARY OF SELECTED DATA CONCERNING INSTITUTIONS OF HIGHER LEARNING FOR NEGROES IN MARYLAND*

Institution and Location	*Date Founded*	*Enrollment, June*	*Number Teachers on Staff*	*Number Acres in Site*	*Estimated Value (Present Value)*
1. Carver Jr. College	1950	39	**	**	**
2. Maryland State College, Princess Anne	1886	431	47	303	$4,500,00
3. Morgan State College, Baltimore	1867	2314	102	91	9,300,00
4. State Teachers College, Bowie	1867	348	16	187	1,720,84
5. State Teachers College, Coppin — Baltimore	1900	206	14	21	920,21

* Source — Replies received from Questionnaire to the College Presidents, Summer 1954.

** Uses staff and facilities of Montgomery County Public Schools.

The foregoing picture, however, gives only a part of the State's support of Negro higher education. To alleviate somewhat the condition of limited opportunities for graduate work or undergraduate work offered at the University of Maryland but not offered at any of the Negro colleges, the General Assembly of Maryland[1] in 1935 authorized the payment of partial scholarships to Negroes attending out-of-state institutions and appropriated $10,000 a year for 1936 and 1937. Additional legislation[2] provided $30,000 yearly for the 1938-39 biennium and subsequent appropriations have been made for each year since that time. Increasing demand has resulted in constantly increasing appropriations and disbursements. The 1954 appropriation was $200,000, with disbursements estimated to be $244,000. The total amount appropriated by the General Assembly for this purpose from 1936 to 1953, inclusive, is $995,000 with $1,269,745 disbursements during the same period — the difference having been made up from supplemental appropriations. The highest number of persons receiving grants was in 1953, with 907 recipients, divided among 76 out-of-state institutions. From the above data, the State appears to have been most generous in its provisions for higher education for Negroes.

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[1] Acts of 1935, Ch. 92.
[2] Acts of 1937, Ch. 506, . . . (Article 49B).

III. TABLE 1.

ENROLLMENT IN MARYLAND PUBLIC SCHOOLS: BY COLOR, SEPTEMBER 1953

County	*All Pupils*	*White*	*Per Cent*	*Colored*	*Per Cent*
Total State	409,570	325,910	79.6	83,660	20.4
Baltimore City	125,266	79,127	63.2	46,139	36.8
Total Counties	284,304	246,783	86.8	37,521	13.2
Allegany	15,837	15,553	98.2	284	1.8
Anne Arundel	24,396	19,663	80.2	4,733	19.8
Baltimore	52,341	48,520	92.7	3,821	7.3
Calvert	3,172	1,594	50.3	1,578	49.7
Caroline	3,869	2,976	76.9	893	23.1
Carroll	8,763	8,311	94.8	452	5.2
Cecil	7,164	6,695	93.5	469	6.5
Charles	5,759	3,197	55.5	2,562	44.5
Dorchester	5,249	3,607	68.7	1,642	31.3
Frederick	11,533	10,458	90.7	1,075	9.3
Garrett	4,518	4,518	100.	—	—
Harford	11,924	10,658	89.4	1,266	10.6
Howard	5,037	4,053	80.5	984	19.5
Kent	2,835	2,013	71.1	822	28.9
Montgomery	37,362	34,860	93.3	2,502	6.7
Prince George's	42,223	36,468	86.4	5,755	13.6
Queen Anne	3,086	2,238	72.5	848	27.5
St. Mary's	3,886	2,734	70.3	1,152	29.7
Somerset	3,945	2,337	59.2	1,608	40.8
Talbot	3,767	2,582	68.5	1,185	31.5
Washington	15,531	15,205	97.9	326	2.1
Wicomico	7,491	5,607	74.9	1,884	25.1
Worcester	4,616	2,936	63.6	1,680	36.4

Table (f)

Data on School Bus Vehicles Available for Transportation of White and Negro Pupils

County	Buses For White No.	Buses For White %	Buses For Negro No.	Buses For Negro %	Total No. Buses	No. Negro Drivers % White Buses
Allegany	98	99.0	1	1.00	99	0
Anne Arundel	84	75.0	28	25.0	112	0
Baltimore	213	91.4	20	8.6	232	2
Calvert	22	59.5	15	40.5	37	0
Caroline	32	74.4	11	25.6	43	0
Carroll	60	90.9	6	9.1	66	1
Cecil	47	83.9	9	16.1	56	1
Charles	37	47.8	27	42.2	64	0
Dorchester	40	70.2	17	29.8	57	0
Frederick	90	89.1	11	10.9	101	0
Garrett	90	100	0	0	90	0
Harford	89	84.8	16	15.2	105	5
Howard	36	80.0	9	20.0	45	3
Kent	23	65.7	12	34.3	35	0
Montgomery	101	77.1	30	22.9	131	0
Prince George's	111	75.5	36	24.5	147	0
Queen Anne's	27	73.0	10	27.0	37	0
St. Mary's	28	65.1	15	34.9	43	0
Somerset	30	63.8	17	36.2	47	0
Talbot	24	70.6	10	29.4	34	0
Washington	88	97.8	2	2.2	90	0
Wicomico	45	73.8	16	26.2	61	0
Worcester	37	62.7	22	37.3	59	0

III. Table 1-A.

Summary Distribution

Percentage Distribution Colored Enrollment	*No. of Counties*	*Baltimore City*
0- 9.9%	8	—
10.0-19.9	4	—
20.0-29.9	5	—
30.0-39.9	3	1
40.0-49.9	3	—
Total	23	1

III. Table 2.

Maryland Public Schools

Average Salary Per Teacher:

By Color 1923-1953*

Year Ending June 30	Elementary Schools		High Schools	
	White	*Colored*	*White*	*Colored*
1923	$1,228	$ 899	$1,690	$1,455
1933	1,401	1,056	1,710	1,197
1943	1,724	1,634	1,968	1,905
1953	3,856	4,017	4,031	3,963

* For purposes of brevity, the data in these tables have been condensed to cover a 30-year period by decades only. All data in this report are from the Annual Reports or other sources on file in the Maryland State Department of Education, unless otherwise indicated.

III. Table 3.

Maryland Public Schools

Average Days in Session: By Color 1923-1953

Year Ending June 30	Total State				Baltimore City				All Counties			
	Elementary		High		Elementary		High		Elementary		High	
	White	Col.	White	Col.	White	Col.	White	Col.	White	Col.	White	Col.
1923	187.3	172.4	186	181.1	188.9	189.1	184	184	186.4	162.5	187	171.5
1933	188	178.4	186.9	181.3	190	190	188	189.5	187.7	167.8	186.4	173
1943	184	185	186	185	188	188	188	188	183	184	183	181
1953	182.4	183.1	182.8	183	184	184	184	184	181.8	182	182.5	182.1

III. Table 4.

Number and Per Cent of Pupils Transported at Public Expense — Maryland Counties: By Color 1923-1953

Year Ending June 30	Elementary				High			
	White		Colored		White		Colored	
	No.	%	No.	%	No.	%	No.	%
1923	3,485	3.	133	1.	843	6.	—	—
1933	28,750	26.5	847	3.	10,209	33.7	502	19.
1943	45,733	42.	6,591	29.	18,804	49.	3,583	69.
1953	68,070	48.1	13,240	57.	54,060	63.7	9,649	73.5

III. Table 5.

Reduction in Number of One-Teacher Schools in Maryland Counties 1923-1953

Year Ending June 30	Total Number Elementary Schools		Number of One-Teacher Schools	
	White	Colored	White	Colored
1923	1,619	521	1,093	403
1933	901	489	406	334
1943	565	298	143	132
1953	498	182	33	26

III. Table 6.

Maryland Public Schools

High School Graduates: By Color 1923-53

Year Ending June 30	All Counties		Baltimore City	
	White	Colored	White	Colored
1923	1,953	24	(Not available)	
1933	4,921	297	2,381	661
1943	6,731	664	2,501	453
1953	8,609	1,086	2,835	826

III. Table 7.

Maryland Public Schools

Current Expense Cost Per Pupil: By Color 1923-53

Year Ending June 30	State Average			
	Elementary		*High*	
	White	*Colored*	*White*	*Colored*
1923	$ 49.69	$ 30.68	$102.25	$ 94.35
1933	52.91	36.84	86.10	61.16
1943	65.23	57.72	113.43	103.15
1953	184.61	185.72	264.11	239.85

III. Table 8.

Maryland Public Schools

Average Number of Pupils Per Teacher: By Color 1923-53

Year Ending June 30	Elementary				High			
	All Counties		*Baltimore City*		*All Counties*		*Baltimore City*	
	White	*Colored*	*White*	*Colored*	*White*	*Colored*	*White*	*Colored*
1923	31.7	38.3	—	—	20.	15.2	—	—
1933	36.2	34.9	34.5	38.3	24.6	26.7	26.5	29.7
1943	36.8	36.3	32.	34.7	23.	25.4	21.	20.9
1953	31.4	32.	32.3	33.5	21.6	21.2	20.9	26.3

IV.

Table (a)

Maryland Population by Counties and Races

1950

County	*Total*	*White*	*Negro*	*% White*	*% Negro*
Allegany	89,540	88,308	1,232	98.63	1.37
Anne Arundel	117,239	94,800	22,439	80.87	19.13
Baltimore County	270,124	252,247	17,877	93.39	6.61
Calvert	12,096	6,972	5,124	57.64	42.36
Caroline	18,234	14,782	3,452	81.07	18.93
Carroll	44,891	42,850	2,041	95.46	4.54
Cecil	33,348	30,742	2,606	92.19	7.81
Charles	23,406	15,190	8,216	64.90	35.10
Dorchester	27,802	20,112	7,690	72.35	27.65
Frederick	62,271	57,979	4,292	93.11	6.89
Garrett	21,258	21,249	9	99.996	.004
Harford	51,741	46,293	5,448	89.48	10.52
Howard	23,105	19,247	3,858	83.31	16.69
Kent	13,671	10,110	3,561	73.96	26.04
Montgomery	164,134	153,804	10,330	93.71	6.29
Prince George's	193,899	171,247	22,652	88.32	11.68
Queen Anne	14,576	10,708	3,868	73.47	26.53
St. Mary's	29,073	23,129	5,944	79.56	20.44
Somerset	20,742	13,416	7,326	64.69	35.31
Talbot	19,418	14,154	5,264	72.90	27.10
Washington	78,869	76,691	2,178	97.24	2.76
Wicomico	39,624	31,252	8,372	78.88	21.12
Worcester	23,142	16,048	7,094	69.35	30.65
Baltimore City	948,754	723,655	225,099	76.28	23.72

Table (b)

Number and Percentage

White and Negro School Population in Counties of Maryland — June 30, 1954

County	*Total School Population*	*White*	*Negro*	*% White*	*% Negro*
Allegany	15,480	15,207	280	98.24	1.76
Anne Arundel	24,231	19,449	4,782	80.26	19.74
Baltimore	51,888	48,272	3,616	93.03	6.97
Calvert	3,075	1,530	1,545	49.76	50.24
Caroline	3,805	2,949	856	77.50	22.50
Carroll	8,635	8,198	437	94.94	5.06
Cecil	7,029	6,567	462	93.43	6.57
Charles	5,660	3,121	2,539	55.14	44.86
Dorchester	5,153	3,522	1,631	68.35	31.65
Frederick	11,497	10,427	1,070	90.69	9.31
Garrett	4,434	4,434	0	100.00	0.00
Harford	13,234	11,930	1,304	90.15	9.85
Howard	4,960	4,007	953	80.79	19.21
Kent	2,773	1,965	808	70.86	29.14
Montgomery	42,561*	39,838	2,723	93.60	6.40
Prince George's	41,650	35,966	5,684	86.32	13.68
Queen Anne	3,246	2,351	895	72.43	27.57
St. Mary's	3,852	2,660	1,192	68.76	31.24
Somerset	3,883	2,309	1,574	59.46	40.54
Talbot	3,714	2,534	1,180	68.23	31.77
Washington	15,746	15,439	307	98.05	1.95
Wicomico	7,347	5,524	1,823	75.19	24.81
Worcester	4,474	2,859	1,615	63.91	36.09

* Plus 444 White Students in Jr. College.
60 Negro Students in Jr. College.

Table (c)

White and Negro School Population in the Counties of Maryland — June 30, 1954

(Elementary — Secondary)

County	*Population*	*White E*	*White S*	*Negro E*	*Negro S*
Allegany	15,487	8,370	6,837	163	117
Anne Arundel	24,231	12,998	6,451	3,094	1,688
Baltimore	51,888	31,283	16,932	2,262	1,354
Calvert	3,075	947	583	1,103	442
Caroline	3,805	1,771	1,178	536	320
Carroll	8,635	4,973	3,225	256	181
Cecil	7,029	4,303	2,264	280	182
Charles	5,660	1,942	1,179	1,671	868
Dorchester	5,153	2,122	1,400	1,016	615
Frederick	11,497	6,242	4,185	697	373
Garrett	4,434	2,715	1,719	0	0
Harford	13,234	8,100	3,830	766	538
Howard	4,960	2,485	1,522	587	366
Kent	2,773	1,197	768	505	303
Montgomery	42,561*	23,715	11,362	1,635	870
Prince George's	41,650	23,693	12,273	3,660	2,024
Queen Anne	3,246	1,378	973	523	372
St. Mary's	3,852	1,755	905	791	401
Somerset	3,883	1,435	874	964	583
Talbot	3,714	1,496	1,038	750	430
Washington	15,746	8,889	5,986	172	135
Wicomico	7,347	3,901	1,623	1,237	586
Worcester	4,474	1,716	1,143	1,066	549

* Plus 444 white students in junior college and 60 colored students in junior college.

TABLE (d)

County	*Total Teaching Personnel*	*White*	*Negro*	*% White*	*% Negro*
Allegany	606	595	11	98.2	1.8
Anne Arundel	882	719.8	162.2	81.6	18.4
Baltimore	1,877	1,725	152	91.9	8.1
Calvert	121	62	59	51.2	48.8
Caroline	163	126	37	77.3	22.7
Carroll	346	328	18	94.8	5.2
Cecil	292	275	17	94.2	5.8
Charles	231	132	99	57.1	42.9
Dorchester	203	147	56	72.5	27.5
Frederick	394.6	359.1	35.5	91.0	9.0
Garrett	175	175	0	100	0
Harford	405	360	45	88.9	11.1
Howard	217	177	40	81.6	18.4
Kent	119.5	85	34.5	71.1	28.9
Montgomery	1,700.5	1,571	129.5	92.4	7.6
Prince George's	1,530	1,312	218	85.8	14.2
Queen Anne's	137	101	36	73.7	26.3
St. Mary's	144	101	43	70.1	29.9
Somerset	162	101	61	62.3	37.7
Talbot	152.5	105	47.5	68.8	31.2
Washington	611	596	15	97.5	2.5
Wicomico	252	185	67	73.4	26.6
Worcester	182	121	61	66.5	33.5

TABLE (e)

County	*Total School Buildings*	*White Elementary*	*White Secondary*	*Negro Elementary*	*Negro Secondary*
Allegany	34	25	7	1	1
Anne Arundel	63	34	8	20	1
Baltimore	77	49	13	12	3
Calvert	17	6	2	8	1
Caroline	13	4	5	3	1
Carroll	19	8	9	1	1
Cecil	30	19	8	2	1
Charles	24	6	5	11	2
Dorchester	33	17	6	9	1
Frederick	37	22	7	7	1
Garrett	31	29	2	0	0
Harford	25	17	4	2	2
Howard	16	6	5	4	1
Kent	18	8	3	6	1
Montgomery	85*	62	13	8	2
Prince George's	95	58	13	19	5
Queen Anne's	15	9	3	2	1
St. Mary's	20	9	2	7	2
Somerset	22	7	5	8	2
Talbot	21	9	2	9	1
Washington	50	38	10	1	1
Wicomico	26	15	1	9	1
Worcester	20	6	6	7	1

* Plus two junior high schools (1 white, 1 negro).

TABLE (g)

SCHOOL PERSONNEL

(Superintendent and Staff)

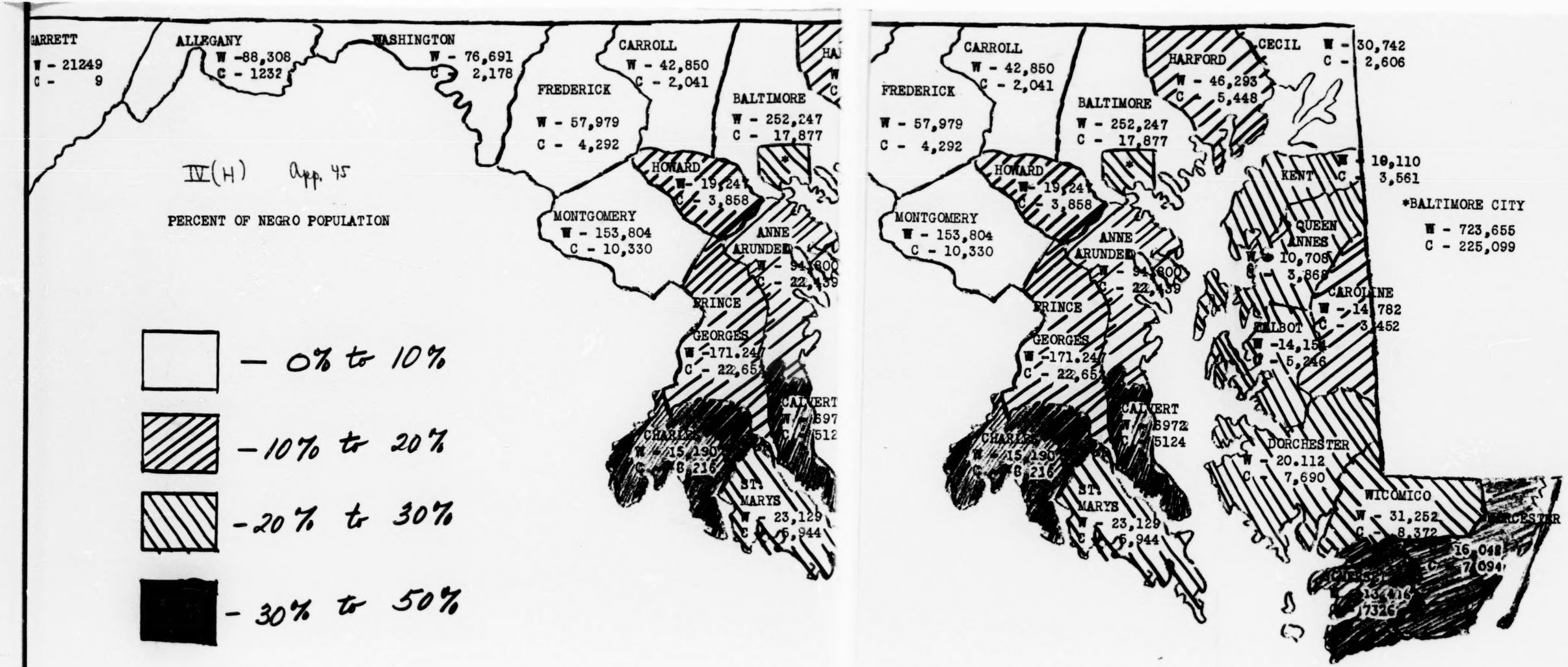
County	*White*	*Negro*	*Total*	*No. of Negro Supervisors*	*No. of Negro V.T.'s*
Allegany	17	0	17	—	—
Anne Arundel	28	2	30	1	1
Baltimore	61	3	64	2	1
Calvert	3	1	4	1	—
Caroline	4	1	5	1	—
Carroll	9	1	10	1	—
Cecil	7	0	7	—	—
Charles	5	3	8	2	1
Dorchester	4	1	5	1	—
Frederick	8	1	9	1	—
Garrett	6	0	6	—	—
Harford	13	0	13	—	—
Howard	5	1	6	1	—
Kent	4	1	5	1	—
Montgomery	72	1	73	1	—
Prince George's	36	3	39	2	1
Queen Anne's	4	1	5	1	—
St. Mary's	5	1	6	1	—
Somerset	4	1	5	1	—
Talbot	4	½	4.5	½	—
Washington	19	0	19	0	—
Wicomico	7	1	8	1	—
Worcester	5	1	6	1	—

Table (g)

School Personnel

(Superintendent and Staff)

County	*White*	*Negro*	*Total*	*No. of Negro Supervisors*	*No. of Negro V.T.'s*
Allegany	17	0	17	—	—
Anne Arundel	28	2	30	1	1
Baltimore	61	3	64	2	1
Calvert	3	1	4	1	—
Caroline	4	1	5	1	—
Carroll	9	1	10	1	—
Cecil	7	0	7	—	—
Charles	5	3	8	2	1
Dorchester	4	1	5	1	—
Frederick	8	1	9	1	—
Garrett	6	0	6	—	—
Harford	13	0	13	—	—
Howard	5	1	6	1	—
Kent	4	1	5	1	—
Montgomery	72	1	73	1	—
Prince George's	36	3	39	2	1
Queen Anne's	4	1	5	1	—
St. Mary's	5	1	6	1	—
Somerset	4	1	5	1	—
Talbot	4	½	4.5	½	—
Washington	19	0	19	0	—
Wicomico	7	1	8	1	—
Worcester	5	1	6	1	—


GARRETT
W - 21249
C - 9
ALLEGANY
W -88,308
C - 1232
WASHINGTON
W - 76,691
C 2,178
FREDERICK
W - 57,979
C - 4,292
CARROLL
W - 42,850
C - 2,041
BALTIMORE
W - 252,247
C - 17,877
HOWARD
W - 19,247
C - 3,858
MONTGOMERY
W - 153,804
C - 10,330
ANNE ARUNDEL
W - 94,800
C - 22,439
PRINCE GEORGES
W -171.247
C - 22,651
CHARLES
W - 15,190
C - 8,216
CALVERT
W - 5972
C - 5124
ST. MARYS
W - 23,129
C - 6,944
HARFORD
W - 46,293
C 5,448
CECIL
W - 30,742
C - 2,606
KENT
W - 10,110
C - 3,561
*BALTIMORE CITY
W - 723,655
C - 225,099
QUEEN ANNES
W - 10,708
C - 3,868
CAROLINE
W - 14,782
C - 3,452
TALBOT
W -14,154
C - 5,246
DORCHESTER
W - 20.112
C - 7,690
WICOMICO
W - 31,252
C - 8,372
16,048
7,094
13,416
7326
IV(H) App. 45
PERCENT OF NEGRO POPULATION
- 0% to 10%
- 10% to 20%
- 20% to 30%
- 30% to 50%

V(a)

DATA RELATING TO DESEGREGATION OF THE SCHOOLS IN THE CITY OF BALTIMORE

DEPARTMENT OF EDUCATION
Administration Building
Three East Twenty-Fifth Street
Baltimore 18, Maryland

Office of
The Superintendent

July 2, 1954

Mr. W. Giles Parker
Deputy Attorney General
Mathieson Building
Baltimore, Maryland

Dear Mr. Parker:

I am sending you herewith copies of several documents which have been developed in the Baltimore Public Schools to deal with the elimination of racial segregation. These include: the opinion of the City Solicitor of Baltimore, the initial statement of policy by the Board of School Commissioners, the administrative directive approved by the Board following its adoption of the policy statement, the address of the Superintendent to the teaching force, and an administrative circular concerning the handling of applications for pupil transfers.

You will note that there is no plan to reorganize the Baltimore School System. It is, rather, our basic assumption that we shall continue to operate very largely as we have in the past except that the race of a pupil will have no bearing upon any decision made affecting him. We shall take no action deliberately to integrate any school because we believe that it would be as wrong to use pupils as the means of bringing about integrated schools as it would be to use them to create segregated units.

At the staff level we shall make no reassignments for racial purposes. As vacancies are filled, selections will be made in each case from the five persons standing highest on the appropriate eligible list. In determining which of the five persons is to be assigned to a given vacancy the specific requirements of the situation and the total qualifications of the candidate will be taken into account.

We have in Baltimore several major assets which should contribute to a smooth transition. For many years our Board has dealt equally with white and Negro schools regarding construction, maintenance, supplies, teacher qualifications, and all of the other elements affecting quality of education. Negro and white staff members have worked together in committees, workshops, and other staff activities. Pupils of both races have visited each others schools and have participated in an increasing number of joint activities.

Baltimore has never followed a rigid districting practice. Of our 175 units, only approximately 35 are districted. Each one of these is a crowded school, about which a boundary has been fixed to prevent its further over-crowding. In such cases pupils living within the boundaries have the right to attend a districted school but are not required to do so. Those who live outside the boundary are not allowed to enter the districted school. In general, any pupil is free to attend any school in the city for which he is qualified. None of our senior high schools and only one junior high school is currently districted.

I trust that I have given you the sort of information you desire but if you have any further questions I shall do my best to answer them for you.

Sincerely yours,

JOHN H. FISCHER,

Superintendent.

V(b)

CITY SOLICITOR'S OFFICE

June 1, 1954

Board of School Commissioners
3 East 25th Street
Baltimore 18, Maryland
Attention: Mr. Walter Sondheim, Jr.

Gentlemen:

This will acknowledge receipt of your letter of May 25, 1954, making inquiry relative to the legal effect upon the duties and obligations of the Board of School Commissioners, of the recent Supreme Court decision regarding segregation of children in public schools on the basis of race.

As you know, Article 32, section 22, of the Baltimore City Code specifically sets forth the Board's duties on this regard, as follows:

> "It is hereby made the duty of the Board of School Commissioners of the City of Baltimore to organize separate schools for colored children, and to establish as many schools for the education of the colored children of Baltimore City as may in the judgment of said board be necessary."

It is the opinion of this Office that the Supreme Court, by its decision, has determined that segregation in education, as provided for by Article 32, section 22, of the Baltimore City Code, is in deprivation of the equal protection of the laws guaranteed by the Fourteenth Amendment, and is, consequently, unconstitutional and invalid.

Very truly yours,

THOMAS N. BIDDISON,

City Solicitor

V(c)

RESOLUTION OF BOARD OF SCHOOL COMMISSIONERS OF BALTIMORE CITY

Adopted at Board Meeting — June 3, 1954

In view of the decision of the Supreme Court regarding segregation in our public schools, and in view of an opinion given us by the Baltimore City Solicitor dated June 1, 1954, it is the opinion of this Board that our system should be conformed to a non-segregated basis to be in effect by the opening of schools in September of this year.

In doing so, we would ask our staff to prepare material outlining the practical steps to be taken and that this material be presented at our next meeting.

V(d)

BALTIMORE-18, MARYLAND

DEPARTMENT OF EDUCATION

Office of
The Superintendent of Public Instruction

June 10, 1954

To the Board of School Commissioners:

Ladies and Gentlemen:

In view of the policy on the elimination of racial segregation in the Baltimore Public Schools enunciated by the School Board on June 3rd, the Board of Superintendents presents the following recommendations to implement that policy:

1. All of the standards and criteria which are now in force with respect to the admission of pupils to schools, grades, or curricula shall continue in force except that the race of the pupil shall not be a consideration.

The present policy of the school system with respect to pupil transfers shall be continued. Under this policy, transfers because of changes of residence are routinely approved. Transfers for other reasons may be approved by the two principals involved or by the appropriate Assistant Superintendent.

2. As in the past, no child shall be required to attend any particular school. Baltimore has never adopted a districting policy which requires such attendance. There is to be no change in the present rule of the School Board for establishing school districts. This rule says, in effect, that where a building is overcrowded, specific district lines may be established as required by building capacity and neighborhood population. No pupil who lives beyond such a line may then enter the districted school. All pupils enrolled in any school prior to the establishment of a district line about that school are permitted to remain there.

   On the other hand, any pupil who lives within such a district and whose parents desire him to attend a more distant school may be admitted to that school if it is not districted and if the reason for seeking a transfer is considered satisfactory. As population increases occur, it may become necessary in the future, as it has in the past, to district additional schools.

3. In the assignment, promotion, and transfer of staff members, the present policy of respecting relative merit shall be scrupulously observed. As in the past, it shall be the purpose of the Department of Education to assign each employee to that position in which he is likely to render his best service to the school and to the community. No person shall be denied any opportunity because of his race.

Respectfully submitted,

JOHN H. FISCHER,

Superintendent.

V(e)

ADDRESS TO THE TEACHERS OF THE BALTIMORE PUBLIC SCHOOLS BY DR. JOHN H. FISCHER, SUPERINTENDENT

June 14-15, 1954

My fellow teachers:

Only the most urgent reason could justify calling you to an extra meeting in this busy final week of the school year. I think you will agree that what brings us here today is of the greatest importance. What I want to discuss with you is the recent action of our Board of School Commissioners eliminating racial segregation in the Baltimore Public Schools at the beginning of the next school year.

It would be better for us to talk about this in a conversational fashion, but the size of our staff denies us that pleasure here. I have no alternative, therefore, but to lay before you some of the major implications of this action for us as teachers, and to invite you to discuss the subject freely among yourselves in your respective schools, or with any of us on the central staff.

Without fear and without subterfuge our Board has met its responsibility. Paraphrasing the words of Robert E. Lee, we cannot now do more than our duty, we shall not want to do less.

The cases in which the Supreme Court handed down its historic decision of May 17 were before the Court for about two years. There was much speculation, as you well know, upon the probable decision and yet it appears extremely doubtful that any student of American history or culture could have been truly surprised when the decision was finally read.

What happened in Washington on the 17th of May 1954 was not unusual for America. The whole course of our history as a nation is marked by such actions, actions which one by one have destroyed barriers that stood between the ordinary man and a richer life. Those of you who know the

history of democracy will recall how the prophets of doom warned against every one of these forward steps. In advance of each one, our ancestors were assured by the viewers-with-alarm that it would undoubtedly lead to the most awful consequences. And each time a strengthened people proved them wrong.

It was so when each shipload of optimists set sail for the New World.

It was so when we determined to separate our colonies from the British crown.

It was so when property qualifications upon voting were removed.

It was so when manhood sufferage was adapted, when child labor was outlawed, when compulsory school attendance was instituted, when slavery was abolished.

And always there have been the satisfied sustainers of the status quo.

In this present instance they are represented by those of both races who say, "But why should we not continue to provide equal separate education? After all, have we not done quite well under that doctrine?"

Listen, if you will, to the words of Court; a court frequently divided in its decisions, but in this one, unanimously decisive.

> "In approaching this problem, we cannot turn the clock back to 1868 when the amendment was adopted, or even to 1896 when Plessy v. Ferguson was written. We must consider public education in the light of its full development and its present place in American life throughout the nation.
>
> "Today education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the im-

portance of education in our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms

* * *

"Segregation of white and colored children in public schools has a detrimental effect upon the colored children. The impact is greater when it has the sanction of the law; for the policy of separating the races is usually interpreted as denoting the inferiority of the Negro group. A sense of inferiority affects the motivation of a child to learn. Segregation with the sanction of law, therefore, has a tendency to retard the educational and mental development of Negro children and to deprive them of some of the benefits they would receive in a racially integrated school system.

"Whatever may have been the extent of psychological knowledge at the time of Plessy v. Ferguson, this finding is amply supported by modern authority. Any language in Plessy v. Ferguson contrary to this finding is rejected.

"We conclude that in the field of public education the doctrine of 'separate but equal' has no place. Separate educational facilities are inherently unequal."

In an editorial published the day after the decision, the *New York Times* pointed out that the Constitution and the Bill of Rights can be hard masters. What the *Times* might have added is that these are masters of our own creation. From our earliest days as a nation we have set down from

time to time in historic documents the high principles by which we mean to govern ourselves. Often these statements have run ahead of our usual behaviour but they remain our deliberately established goals and our own freely chosen standards.

It is when we become aware that our daily conduct is inconsistent with these statements of purpose that we begin to rise above our past. It is on these occasions that the American dream comes more nearly true for more Americans.

In one of these pivotal chapters of American history we are now privileged to become active participants. To a greater degree than most historic events the abolition of segregation in public schools will affect the daily lives of individuals. Because it has to do with long-established patterns of association, it will raise questions with emotional overtones. To ignore these aspects of the problem would be unwise and irresponsible.

Being teachers and, therefore, students of human behaviour we need to understand these things, and being human, we must view our own attitudes with as much objectivity as we can muster. As instructors of children and leaders of community thought, we must be sensitive to the anxieties which exist, and we should prepare ourselves to be of the greatest possible assistance in clarifying misunderstandings and providing reassurance.

Let me review some of the questions that are being asked, and let me give you such information as I can bearing upon them.

1. Will the school system be reorganized to integrate all schools?

The answer to that question is "No". There will be no such reorganization. All of our present policies for admitting or transferring pupils will remain in full effect, except that no child shall be denied entry to any school or

class because of his race. The designation of white and Negro schools will, of course, be discontinued, because every school will now receive children of both races. But no effort will be made deliberately to transfer children of either race for the purpose of "mixing" schools. We have had the last of placing children anywhere for racial reasons. Hereafter every child will be dealt with strictly on the basis of his educational requirements and in terms of his best development.

The Division of Colored Schools will cease to exist, but no one now associated with that Division will suffer any loss of status because of this administrative change.

2. Will there be a large number of pupil transfers in September?

There should not be. Because of the long-standing policy of our Board and our City Government, Negro and white schools in Baltimore are operated according to equal standards. In the construction of buildings and their maintenance, in the professional examination of teachers, in the allocation of funds for books and supplies there have been no racial distinctions.

It is no secret that we have many crowded schools, or that most Baltimore children attend school in buildings that are about as old as the homes in which they live. But this statement applies to children of both races. Where a nearby school offers advantages to any pupil, white or Negro, over the school he now attends, and the parent requests a transfer, the request should be granted. But only in rare instances should a young child be sent far from his home to another school.

At the secondary or vocational level, distance is less important, but in such cases a pupil in the middle of a three year program should be transferred only where it is clearly advisable for him to do so.

3. Will teachers or other staff members be discharged as a result of the new policy?

Again, the answer is "No." As in the past, vacancies which occur in the future will be filled with a scrupulous regard for relative merit. There will be one eligible list for each type of position. Whenever a vacancy occurs, one of the applicants of the five standing highest on the list will be selected for employment. As in the past specific requirements of the position and the total qualifications of each available candidate will determine who is assigned. Whether we are dealing with teaching positions filled by transfer or initial placement, or promotional positions filled by selection by the Board of Superintendents, no one will be discriminated against because of his race. Nor will his race entitle anyone to preferment over another who is better qualified.

4. Will children be required to attend particular schools?

No, and again I refer to our present policy. Baltimore does not insist that any child attend the school in whose district he lives. Of our 175 school units only about 25 or 30 which are badly crowded are districted. In these cases, children living within a prescribed area have the right to attend the districted school and others are excluded. But if a child living in any district wishes to attend elsewhere, he may do so if the school of his choice is not itself districted and if there is a good reason for transferring.

No secondary school except Garrison Junior High School is now districted and every other one is accordingly available to any qualified student.

As population changes occur additional schools may have to be districted, and if this happens, the regular policy will apply. No child will be deliberately assigned to any school because of his race.

5. The question perhaps most frequently asked is, "Will it work?"

The only guide we can have for the future is our experience of the past.

At the staff level we have been working for many years in groups assembled without regard to race. In workshops, in committees, in staff conferences of all kinds we have helped and complemented each other. In the Public School Teachers Association, the Teachers Union, the Principals Association, integration has been the pattern for many years. In our staff we know it has worked.

In many of our schools Negro and white pupils have visited each other to exchange assembly programs, to engage in debates, to discuss common problems. This has worked.

For several years, the Junior Red Cross has conducted summer workshops in which white and Negro pupils have worked and played side by side with pleasure and profit. This has worked.

Here at Poly Negro boys were admitted to the "A" Course in 1952. The faculty and student body decided at the outset that there would be in this school only one class of boy — the Poly boy. The Negro students, now some 40 of them, participate in every phase of school life. Has it worked? The first boy is scheduled to graduate next June. You might ask him or his white classmates who refer to him as a "good guy".

In our adult education program for a number of years, without headlines or fanfare, Negro and white students have studied in the same classes and within the month, in this very building we have organized an adult center in which the faculty and the student body both include white and Negro members, in about the same proportions as our total school population. And this is working so well that the viewers-with-alarm couldn't have been more wrong.

But, some say, what about the parents? How will they react? Since 1947 when our Coordinating Council of Parent Teacher Organizations was formed, it has been a unified group. Established on the basis of councilmanic districts, the executive board of the Council has included every year men and women of both races. Has it worked? The record of the Council's accomplishments is proof enough of its success.

Will it work? Review, if you please, every activity of our school system for the past fifteen or more years in which Negro and white children, adult students, or staff members have been associated. You will discover that, without exception, every one has succeeded.

In response to such facts as I have given, some will say that these experiences have occurred on too small a scale to be conclusive. They may not represent the general reaction. Many of us think that, on the contrary, these experiences do in truth represent the general reaction of pupils, teachers and parents. There is abundant evidence that good will and good sense are widely distributed among our people and that those qualities are characteristic of both our races.

To be sure, there are a few white persons who see no good in any Negro and a scattering of Negroes who look with distaste or distrust on every white person. Such people are a small minority among us. Both their number and their influence are happily on the decline. I doubt that there are any in our teaching staff. Certain it is that such people would feel uncomfortable and unwelcome in this group.

Jacques Barzun in his delightful new book, "God's Country and Mine" says, "The first thing that democracy must be is inclusive." We may add that he who would serve as a teacher in a democracy must be broadly inclusive not only in his sympathy but in his appreciation of the good in all manner of men.

When our schools face such a mission as the one we are now assigned, I value more than ever the knowledge that

ours is a great army of volunteers. Of our own choice we have enlisted to serve all our people and the cause of education. We are, therefore, entitled tc share the quiet pride that only the volunteer may feel.

We are in many ways a fortunate group. We teachers enjoy priceless blessings, despite whatever problems we face. Ours is a happy task for every day we deal with youth and growth and enlightenment. All that we do is founded upon faith and hope and love. The love of truth, the love of learning, the love of children, these are great forces with which to work.

There is no doubt that the world could be transformed if only their power could be fully unleashed. More than most men and women, we are in a position to use that power.

Walter Hines Page was thinking in this vein a half century ago when at a Normal School Commencement in Athens, Georgia, he said:

> "It is a shining day in any educated man's growth when he comes to see and to know and to feel and freely to admit that it is just as important to the world that the child of his neighbor should be trained as it is that his own child should be. Until a man sees this he cannot become a worthy democrat nor get a patriotic conception of education; for no man has known the deep meaning of democracy or felt either its obligation or its lift till he has seen this truth clearly."

There are many reasons why I take pride in my twenty-four years of membership in this staff. And the response which so many of you are making wholeheartedly and voluntarily to the enormous new responsibility now placed upon you has added to this sense of great privilege which I feel. I know that in many faculties plans are being made to receive graciously new pupils and staff members of the race not now represented in your school. By chance on Friday, I saw a copy of a letter addressed by the principal

of one of our schools to his faculty. This happens to be a white school, No. 10-10A, and the principal is Mr. James Carroll. But the tone of the message so well reflects the spirit of our entire system that I want to read it to you and with it to conclude my remarks and this meeting—

"It is probable the addition of Negro teachers and pupils to this school will be an established fact next September.

The adjustment problem may well be a simple one if you prepare yourself and your class for the change. Knowing all of you as I do, I am certain the problem will be simple with us.

For my part, I shall receive every teacher and every pupil on terms of perfect equality.

I shall give the Negro teacher or the Negro child no special favors because of his color, nor shall I withhold any privilege or right from him because he is Negro.

I shall remember that the same God made both of us — that he put my mind inside a white skin — that except for the accident of birth my mind might well have been covered by a colored skin and the mind of my new helper or pupil might have been placed inside the white skin.

My stepson found the Negro boys who fought in Korea beside him to be first-class fighting men who neither asked for nor received special favors. He learned that the colored skin received enemy bullets with the same bravery that the white skin received them.

The tax collector accepts (demands) money from the colored hand as from the white.

Segregation in the schools has ended. Let us make the transition in this school a smooth transition. Let us be proud of ourselves next June."

VI.

THE WEST RIVER PROCLAMATION

Being very deeply concerned with the results of the recent Supreme Court opinion on the conduct of education by the states, we, the parents and teachers of Owensville Elementary and Southern High Schools have assembled and given due consideration to our rights and responsibilities in the operation of public schools. Being citizens of the free and sovereign state of Maryland and being conscious of its great tradition of tolerance for the diverse religious faiths, political creeds, and natural races of mankind, we petition the State government to continue to respect the rights reserved to the people of the Federal and State Constitutions. We believe, as our ancestors proclaimed in 1776, that all men are created equal, that they are endowed with certain inalienable rights, that to secure these rights governments are instituted among men deriving their just powers only from the consent of the governed, and that among our rights is a direct voice in the education of our children.

Upon these timeless truths we base our firm resolutions as follows:

1. That any action taken in this state in consequence of the recent opinion of the Supreme Court should be based only upon due process of state law sanctioned by the people through referendum, and not merely upon arbitrary action of temporary office holders or appointed commissions.

2. That in order to assure equal protection of the law to each race and to prevent development of an inferiority complex in any child, no child should be compelled to undertake public education under instructors not of his own race without consent of his parents or guardians.

3. That the administration of free schools should be conducted on the principle of maximum local control with the objective of the greatest satisfaction to all participating students, subordinating neither the majority to the minority nor the minority to the majority.

4. That to accomplish these objectives it is essential to give local populations a direct voice in the selection of their own Boards of Education and their school trustees, and that these locally designated representatives should retain the authority to establish equitable administrative policies for selection of instructors and for admission to the various schools in their responsibility and to make plans for necessary expansion and assignment of facilities.

We earnestly solicit the adoption of these sincere resolutions, which we henceforth will identify as the "West River Proclamation," by every fair-minded organization interested in public education in the free state of Maryland.

Formally Approved By:

Southern High School P. T. A. on August 11, 1954

Owensville School P. T. A. on August 19, 1954

Subsequently endorsed by other
Anne Arundel County Public School P. T. A.

VII.

PETITION CIRCULATED BY THE "MARYLAND PETITION COMMITTEE"

STATE-WIDE PETITION COLLECTED IN ..... COUNTY

We, the undersigned citizens of the State of Maryland, being residents of voting age, do consider the ruling of the U. S. Supreme Court on May 17, 1954, against race segregation in public schools as an invasion and violation of our individual rights under a sovereign state. We believe that the heritage of our race is the one gift received from our ancestors which we may with surety transmit to our children. We believe that this God given heritage should not be taken from us by any human law or decision. We believe that it is the duty of judicial, legislative and executive agencies to protect this heritage, not to move for its destruction. We believe that the abolition of segregation in

our schools strikes through our children, at the survival of our race, because it deprives them of protection which they need until they develop adult judgment.

We, therefore, do petition the government of the State of Maryland to make provision for the establishment of a system of private schools for any group or groups which may wish to protect the continued existence of its own race; and make provision that any citizen who subscribes to the support of such a school shall be entitled to and, in fact, shall receive a rebatement of, or a freedom from all taxes collected or to be collected from him, henceforth, for all purposes of public instruction.

Joined together in this common cause, one to another, we are in full belief that our Constitution grants us the right to withdraw our children from the public schools at any time the aforementioned privileges are denied us by the State of Maryland. By affixing our signatures we do witness that we have never, nor do we intend to ever become a member of any organization advocating the overthrow of the government of the United States of America by force or violence.

NAME (SIGNATURE) MAILING ADDRESS

.....

.....

VIII(a)

MORGAN STATE COLLEGE
Baltimore 12, Maryland

June 21, 1954

To the Superintendents of Maryland Schools

The principals, supervisors and presidents of the Negro schools and colleges of the State met in a conference at Morgan State College on June 19 to consider how they might contribute to a smooth and orderly adjustment of

our public school system to the recent decision of the Supreme Court of the United States.

The attached statement was adopted by the conference. It is hoped that you will find this statement helpful in the formulation of plans and procedures in your county.

I am also enclosing two of the papers read at the conference. In addition to the value of their content, these papers will convey to you the basic approach of the conference.

Cordially,

MARTIN D. JENKINS,

President of Morgan State College
and Chairman of the Conference.

cc: Boards of Education

VIII(b)

A STATEMENT ADOPTED BY THE CONFERENCE ON PUBLIC SCHOOL INTEGRATION IN MARYLAND

June 19, 1954

The Supreme Court of the United States has rendered the decision that segregation in public education is in violation of our national constitution. The principals, supervisors and presidents of Negro schools in Maryland recognize that no other decision was possible if the enduring and universal principles enunciated in our constitution were followed to the ultimate. And because we believe that this is the beginning of a new era of human relations in this state, citizens of Maryland have had their faith and belief in democracy strengthened. Each in his own way, Negro and white, will now have the opportunity to contribute to the good of society in terms of individual qualifications.

We recognize that the transfer from a dual system to a democratically organized system may give rise to many

problems of adjustment. This conference goes on record as pledging Negro educational leaders to unstinted effort to make democracy work at this time. We believe that the leaders represented at this conference will take immediate steps to prepare the general public, teachers, administrators and pupils for integrated schools. We believe, further, that all the other educational leaders of the state will want us to stand shoulder to shoulder with them in a cooperative effort to meet this situation in a democratic way. We ask only an opportunity to serve the common good.

This conference commends the educational leaders of our state for the forthright position taken looking toward implementation of the Court's decision.

We commend the educational leaders of Baltimore City for their immediate implementation of the Supreme Court's decision. We likewise commend the State Superintendent of Schools and the State Board of Education for the unequivocal statement of intent to conform to the mandate of the Supreme Court.

Excerpts from the statement of the State Superintendent and the State Board of Education follow.

> The Supreme Court of the land has spoken. It is the duty and responsibility of the State Board of Education to do all within its power to work out the problem "seemingly and in order" and in such manner that the rights and privileges of no individual are impaired by arbitrary or capricious methods * * *
>
> The detailed problem in respect to implementing the decision of the Supreme Court will rest primarily upon the local boards of education. The problems involved in any program of integration will vary among the different school systems of the State, but we are confident that they will be solved in a fair, decent, and legal manner and with good common sense. Furthermore, we are confident that the local school boards, the local school officials, and the parents will settle this problem

without resorting to chicanery or devious methods and with due regard for the rights of all parties concerned. Any program of implementation will be based upon professional and human considerations and not with coercive designs or methods. The public school system of Maryland has always been known for its high professional attitude and for its unbiased and unprejudiced treatment of all children.

The role of the State Board of Education is not to set the detailed pattern of operation but to take an official position that the decision will be implemented with fairness and justice to all, and with due regard for the professional aspects of the program. Further, its responsibility is to act in a general over-all supervisory nature to insure that standard, equitable practices are followed throughout the State.

In view of expressed positions of the highest governing boards in the public schools of the State, this conference enunciates several assumptions which we believe will underlie any and all decisions in any and all educational subdivisions of the state.

1. We assume the Board of Education of each county will adopt and announce a policy with respect to the integration of public schools which will make clear the determination that the schools shall be organized and administered without regard to race of pupils, teachers and administrative officers and non-teaching personnel.

2. We assume and believe that Negro citizens will be called to committee work designed to lay plans for the integration of schools. We believe that Negro leaders should participate in planning from the outset and to assist in formulating calm, logical approaches which may be made at this time.

3. We assume that in each county specific plans will be made for preparing teachers and administrative personnel, both white and Negro, for integrated schools.

We believe there are many negative factors, emotional and attitudinal, which can be eliminated through careful planning and preparation.

4. We assume that there will be specific plans for preparing pupils, both Negro and white, for integrated schools. Children reflect in their personalities the mores of the community in which they live. Planning and preparation will pay large dividends in Americanism.

5. The school children are but one population of many concerned with this problem. We assume that each county will make specific plans to enlist the cooperation of parents, community leaders and community agencies, both Negro and white, in the development of positive attitudes for integrated schools.

VIII(c)

CONFERENCE ON PUBLIC SCHOOL INTEGRATION IN MARYLAND

Morgan State College

June 19, 1954

What Can Be Done to Prepare Teachers and Administrative Officers, both White and Negro, for Integrated Schools? (Outline of a Presentation by a Conference Participant)

The recent decision which was handed down by the Supreme Court of the United States anent segregation in public schools has deep and broad implications for the principal and teacher. Great and far-reaching social changes beget uncertainties, doubts, lack of a sense of security, and many obstructions to the ultimate fruition of those changes. Therefore, in order that we may chart our course with some degree of certainty and in order that we might have a few points for your studied consideration, I herewith list the following:

Challenge 1: The Negro teacher, much more so than the Negro student, needs to become emotionally and psychologically competent in terms of the demands of integration.

A. The school principal should provide staff meetings at which time prerequisites for the successful teacher participation might cooperatively be agreed upon.

B. The principal with the teachers, could with the help of his staff, organize an instrument for the purpose of teacher self-appraisal.

C. The principal should use his influence with the chief executive officer of his school system to have teachers of his school appointed to integrated school committees.

Challenge 2: In order to eliminate possibilities of tensions during this period, what steps should be taken by administrators, supervisors, counselors and teachers?

A. Within the keeping of teachers, both white and Negro, are students who after all represent the end product; it is within their power to set the pace of their students and hold in subjection those who might tend toward being firebrands and trouble makers. This might be done by:

1. Members of the staff, including the principal, discussing with students the implications of the Supreme Court decision in a very frank, objective and unemotional manner.

2. Making every effort to see to it that students representing the school participate in every integrated county-wide and state-wide school program which may be sponsored within their systems. However, the administration should take every precaution to see to it that proper and enlightened supervision is provided.

3. Those who are charged with the guidance and direction of our boys and girls should make every

effort to arrange for the kind of programs within their respective schools which will provide the opportunity to invite white boys and girls to come into the Negro school and share in that program.

Challenge 3: There is a dire need for white teachers to develop an understanding of Negro children on social, economic, psychological and achievement levels.

A. Invitations should be extended to outstanding white teachers to participate on the staff meetings of the Negro schools.

B. There should be a constant exchange of news and information between white and colored schools.

C. Surveys and studies which are made relative to the Negro school population should be made available; however, some caution should be observed in this particular instance.

D. Administrative officers should make every effort to encourage civic and church organizations to utilize where possible the vast reservoir of talent which could be used.

IX.

The Trustee Committee on State Scholarships
MORGAN STATE COLLEGE
Baltimore 12, Maryland

July 7, 1954

A STATEMENT OF POLICY GOVERNING THE AWARDS OF STATE SCHOLARSHIPS

In compliance with an opinion of the United States Supreme Court, rendered on May 17, 1954, and in view of the action of the Board of Regents of the University of Maryland, which provides for the admission of all eligible citizens

of the State without regard to race, creed or color, and in accordance with the ruling of the Attorney General of Maryland, the above named Committee announces its new policy as follows:

1. Beginning with the academic year 1954-55 (September, 1954), no grants will be made to new applicants for State Scholarships.

2. Current recipients of State Scholarships, whose status as candidates for degrees is definitely established on or before September 1, 1954, may have their grants renewed until they graduate, provided graduation shall be accomplished within a reasonable time. Scholarships will be terminated in June, 1958.

3. Questionnaires have been mailed to all recipients of Scholarships for the academic year 1953-54, and the Summer of 1954, as a first step in determining their eligibility for renewal privileges. These should be filled out and returned to the Secretary immediately. The next step will be a verification of the facts submitted, either from data in our files or by the University the student is attending.

4. Late in August or early in September, 1954, the Committee will consider all applicants for renewal of scholarship grants in light of the above policies. Renewal application forms will be sent on request. No such applications will be honored after August 1.

THE TRUSTEE COMMITTEE
ON STATE SCHOLARSHIPS

Ivan E. McDougle, Chairman

Willard W. Allen

Josiah F. Henry, Jr.

Martin D. Jenkins

Edw. N. Wilson, Secretary

X.

MARYLAND CONSTITUTIONAL PROVISIONS AND STATUTES RELATING TO SEGREGATION IN EDUCATION

(a) Constitution of Maryland

Article VIII.

Education

Section 1. The General Assembly, at its first session after the adoption of this Constitution, shall, by law, establish throughout the State a thorough and efficient system of free Public Schools; and shall provide by taxation or otherwise, for their maintenance.

Annotated Code of Maryland (1951 Ed.)

Article 77

Public Education

Chapter 12. State Teachers' Colleges

(b) Section 160. The state board of education and the state superintendent of schools shall be the board of trustees of each of the normal schools maintained and supported by the State; the state normal school at Towson, the state normal school at Frostburg and the state normal school at Bowie.

Chapter 18. Schools for Colored Children

(c) Section 207. It shall be the duty of the county board of education to establish one or more public schools in each election district for all colored youths, between six and twenty years of age, to which admission shall be free, and which shall be kept open not less than one hundred and eighty (180) actual school days or nine months in each

year: provided, that the colored population of any such district shall, in the judgment of the county board of education, warrant the establishment of such a school or schools.

(d) Section 208. Each colored school shall be under the direction of a district board of school trustees, to be appointed by the county board of education subject to the provisions of Section 13 of this Article, and schools for colored children shall be subject to all the provisions of this Article.

Free Scholarships

State Teachers Colleges

(e) Section 269. There shall be located in the city of Baltimore or elsewhere (if the board of education deem best) a State normal school for the instruction and practice of colored teachers in the science of education, the art of teaching and the mode of governing schools, to be known as State Normal No. 3 (now a State Teachers College); the said school shall be under the control of the State board of education, who shall appoint the principal and necessary assistants; and the faculty shall consist of a principal and as many teachers as the board shall appoint. The sessions of the school shall be determined by the State board of education, who shall prescribe the curriculum of study, which, however, shall include courses for the special preparation of instructors for teaching the elements of agriculture and mechanic arts, provide necessary quarters, supplies and apparatus, fix the qualifications for admission as students, the salary of the principal, assistant teachers and employes.

Baltimore City Code (1950 Ed.)
Article 32

Schools

Schools for Colored Children

(Originally Ordinance of Mayor and City Council of Baltimore, No. 44, July 10, 1867)

(f) Section 22. It is hereby made the duty of the Board of School Commissioners of the City of Baltimore to organize separate schools for colored children, and to establish as many schools for the education of the colored children of Baltimore City as may in the judgment of said board be necessary.

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In The Supreme Court Of The United States

OCTOBER TERM, 1954

Nos. 1, 2, 3, & 5

OLIVER BROWN, ET AL., APPELLANTS
v.
BOARD OF EDUCATION OF TOPEKA, SHAWNEE COUNTY, KANSAS, ET AL.

HARRY BRIGGS, JR., ET AL., APPELLANTS
v.
R. W. ELLIOTT, ET AL.

DOROTHY E. DAVIS, ET AL., APPELLANTS
v.
COUNTY SCHOOL BOARD OF PRINCE EDWARD COUNTY, VIRGINIA, ET AL.

FRANCIS B. GEBHART, ET AL., PETITIONERS
v.
ETHEL LOUISE BELTON, ET AL.

BRIEF OF HARRY McMULLAN
ATTORNEY GENERAL OF NORTH CAROLINA, AMICUS CURIAE

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BRIEF OF HARRY McMULLAN

ATTORNEY GENERAL OF NORTH CAROLINA, AMICUS CURIAE

PRELIMINARY STATEMENT

The Attorney General of the State of North Carolina submits this brief as amicus curiae because of the vast importance to the State of North Carolina, and to all of the people of the State, of the decision heretofore announced and of the decrees to be issued by this Court in these cases.

The State of North Carolina is not a party to any of these actions and its Attorney General is not authorized to make it a party thereto or to enter an appearance on its behalf.

As suggested by the Court, with approval of His Excellency, William B. Umstead, Governor of North Carolina, this brief is submitted for the purpose of stating to the Court what, in our opinion, the answers should be to its Questions 4 and 5, set forth in Footnote 13 to its opinion in these cases issued May 17, 1954.

It must be frankly stated at the outset that this brief is not intended to present any solution to the extremely delicate and dangerous problem which has arisen in North Carolina by reason of this Court's decision. It is impossible for the Attorney General to present any plan to this Court for the mixing of the races in the public schools of North Carolina, and such is not the purpose of this brief.

The Kansas and Delaware cases apparently involve no further problems and, thus, there are left for the present consideration of the Court only the decrees to be entered in the cases concerning school boards of Clarendon County, South Carolina, and Prince Edward County, Virginia.

This Court apparently recognizes that in overruling its historic decisions and adopting an entirely new concept of the scope of the Fourteenth Amendment, making necessary a change in the public schools in 17 states including North Carolina and directly affecting the customs and lives of fifty million people, consideration must be given to the impact of this revolutionary pronouncement on the states which heretofore acted upon this Court's former decisions holding that they were entirely within their constitutional power in providing for the separation of the races in their public schools.

This brief is submitted for the purpose of showing the

unparalleled gravity of nullifying the Constitution and laws of North Carolina affecting its most cherished, important, and expensive enterprise, its public schools, and for the purpose of stating sincerely and emphatically that the subsequent decrees of this Court in these cases should allow the greatest possible latitude to the District Judges in conducting subsequent hearings and in drafting final decrees, if any of the objectives sought by this Court's decision are to be attained.

From all information available, an attempt to compel the intermixture of the races in the public schools of North Carolina forthwith would result in such violent opposition as to endanger the continued existence of the schools. It is impossible at this time to foresee what the final results would be even if the Court should recognize the divergent conditions existing in this State and allow sufficient time and ample discretion in the District Judges to frame final decrees after full hearings to meet these conditions. This, however, would seem to be the only way, if any way can be found, which might possibly have the result which the decision of this Court contemplates.

The General Assembly of North Carolina has not convened since this Court handed down its decision on May 17, 1954. What action the General Assembly may take and the final decision of the people of North Carolina may depend upon what ultimate decrees are entered in this Court and in the District Courts. The Attorney General of North Carolina has no authority whatever to say what this action will be or to commit in any way the General Assembly, or the people of North Carolina, to any particular course of action in this grave situation. No other problem has so deeply moved and disturbed the people of the State since the dark days of the early 'sixties.

QUESTIONS PROPOUNDED BY THE COURT

The Court restored these cases to the docket for further argument on Questions 4 and 5 previously propounded by the Court as follows:

"4. Assuming it is decided that segregation in public schools violates the Fourteenth Amendment

"(a) would a decree necessarily follow providing that, within the limits set by normal geographic school districting, Negro children should forthwith be admitted to schools of their choice, or

"(b) may this Court, in the exercise of its equity powers, permit an effective gradual adjustment to be brought about from existing segregated systems to a system not based on color distinctions?

"5. On the assumption on which question 4 (a) and (b) are based, and assuming further that this Court will exercise its equity powers to the end described in question 4 (b),

"(a) should this Court formulate detailed decrees in these cases;

"(b) if so, what specific issues should the decrees reach;

"(c) should this Court appoint a special master to hear evidence with a view to recommending specific terms for such decrees;

"(d) should this Court remand to the courts of first instance with directions to frame decrees in these cases, and if so, what general directions should the decrees of this Court include and what procedures should the courts of first instance follow in arriving at the specific terms of more detailed decrees?"

SUMMARY OF ARGUMENT

It is submitted that the answer to Question 4 (a) is clearly, "No," and the answer to Question 4 (b) is clearly, "Yes." The answer to Question 5 (a) is "No," which eliminates Questions 5 (b) and 5 (c). The answer to Question 5 (d) is that the judgments in Briggs v. Elliott and in Davis v. County School Board of Prince Edward County, Virginia, should be remanded to the courts of first instance with no instructions except the general instructions set forth in Part III of this brief.

This Court's determination that the state constitutions and statutes before it violate the Fourteenth Amendment does not compel the issuance of a decree "providing that, within the limits set by normal geographic school districting, Negro children should forthwith be admitted to schools of their choice." On the contrary, in our opinion neither this Court nor any other federal court is authorized to issue such a decree.

Section 5 of the Fourteenth Amendment empowers Congress to enact "appropriate legislation" to enforce the amendment, but in the absence of legislation enacted by Congress, whatever may be the case when Congress has spoken, no federal court is authorized to legislate and give to a state or a local school board affirmative directions as to the operation of its public schools. The federal courts may compel a school board to desist from a practice which violates the Fourteenth Amendment, but they may not compel the state, or any of its agencies or subdivisions to do what, in effect, would place the courts in charge of supervising the operation of its public schools.

This Court has decided in these cases that segregation of children (1) in public schools, (2) solely on the basis of race, violates the constitutional rights of children in the minority group. The decision would not reach public schools in which pupils are separated on the basis of sex, on the basis of intelligence or achievement tests, or on any other basis except race, provided only that the basis has a reasonable relation to the proper conduct of the schools or to the preservation of the public peace, morals, health or welfare. It would not, of course, have any application to any state which no longer maintains public schools.

Even if this Court had the authority to require these defendant school boards to permit a Negro child to go to school in whichever building within the district the child selects, a privilege, incidentally, which white children do not have in North Carolina, such a decree would not necessarily follow from the determination that the state constitutions and statutes before the Court are unconstitutional. This Court, in the exercise of its equity powers which the plaintiffs have

invoked, is not required to consider these plaintiffs, and others similarly situated, to the exclusion of others not similarly situated or of others similarly situated but not desiring to attend or send their children to mixed schools. A court of equity may so frame its decree as to preserve both the rights of the plaintiff and the peace of the United States, or of a single state or community. It is not necessary, in order to secure the constitutional rights of the plaintiffs, to subject to grave danger of destruction a public school system painfully evolved through the sacrifices of four successive generations, which acted in reliance upon the interpretation placed upon the Fourteenth Amendment by this Court, by the Congress, and by the courts of last resort in Northern as well as Southern states. Even if it were, this Court may and should stay its hand because of the greater interest of these plaintiffs and all others, whether similarly situated or not, in the maintenance of public schools.

The Court has well said:

> "(B)ecause of the great variety of local conditions, the formulation of decrees in these cases presents problems of considerable complexity."

This diversity exists not only between state and state, but also, and to an even more pronounced degree, between regions and communities within a single state. An averaging of the differences between parts of South Carolina approaches in result an averaging of the differences between parts of North Carolina much more closely than conditions in western North Carolina counties approach those in eastern North Carolina counties. If the public schools and the public peace are to be preserved, the decrees to be entered in the South Carolina and Virginia cases must be framed to fit the conditions in the actual communities involved, not to fit the conditions in a non-existent, average community. Only a court conversant with local conditions and granted wide discretion can tailor the decree to fit the local variations.

It may be, as Mr. Justice Jackson suggested during the oral argument of these cases, that to send the cases back to

the lower courts, without standards to guide them in their further proceedings, will mean a generation of litigation. If so, such a result is far preferable to a generation of strife outside the courts and of chaos inside the schoolroom.

The Attorney General of North Carolina and the State Superintendent of Public Instruction prepared and sent a questionnaire to 174 county and city school superintendents throughout North Carolina. Appendix, Exhibit 6. It was designed to ascertain what consequences these men, who know more about the schools of North Carolina than any other group anywhere, anticipate would flow from an attempt to commingle forthwith Negro and white or Indian children in North Carolina schools, within the limits of normal geographic school districting. Each superintendent was asked to give his opinion with reference to his own school unit alone. Of the 165 who expressed opinions, within the time limit set by the transmittal letter (Appendix, Exhibit 6), only 7 believe such an attempt would be accepted peacefully. 145 believe it would seriously impair their conduct of their schools. 124 believe it would cause serious complications in the operation of school busses serving their schools. 135 believe they would have serious difficulty in securing a sufficient number of properly trained white teachers and only 3 believe it would be practicable to use Negro teachers. 148 believe serious problems of discipline would be created. 146 believe extra-curricular activities would be seriously affected. 141 believe parents in large numbers would withdraw their children from the public schools. 138 believe instruction would be seriously impaired by reason of the difference between the average attainments of white and Negro children. 163 are of the opinion that white children will not attend schools heretofore conducted for Negroes, none expressing a contrary opinion. It is a matter of common knowledge in North Carolina that the schools now operated for white children, like those now operated for Negro children, are so crowded it would be a physical impossibility to squeeze any substantial number of Negro children into them, unless a corresponding number of white children either go to the schools presently operated for Negroes or drop out of school.

149 of the superintendents believe a gradual adjustment over a period of time would enable their schools to cope better with the problems flowing from a conversion of the existing school system to one not based on color distinction.

The school superintendents were invited to state in their own words such explanations of their answers to the questions in this questionnaire as they might wish to make. Most of them did so. It may be of interest to the Court to read all of these statements made by those who best know all facets of the school problems in their respective communities. Therefore, these explanatory responses to each question are printed in the Appendix, Exhibit 7.

The Attorney General of North Carolina also prepared and sent another questionnaire to 438 sheriffs and chiefs of police throughout North Carolina. Appendix, Exhibit 8. It was designed to ascertain what these men, who know more about the likelihood of violence in North Carolina than any other group, believe about the likelihood of violence if an attempt were made to commingle forthwith Negro and white children in North Carolina schools within the limits of normal geographic school districting. Each officer was asked to give his opinion with reference to his police jurisdiction alone. Of 198 officers who replied within the time limit fixed by the letter of transmittal (Appendix, Exhibit 8), 191 believe there would be likelihood of violence among racial groups of students which would seriously interfere with the operation of the schools. 189 believe parents, and others not students, would be involved in such violence. 192 believe there would be danger of violence on school busses or at places where children wait for busses. 179 believe their present police forces would not be sufficient to preserve the general peace and order if such an attempt to commingle the children were made forthwith. Only 4 officers out of the 198 who replied believe white parents would permit their children to attend schools in which a substantial number of the students are Negroes, 186 expressing a contrary opinion. 71 believe Negro parents would not permit their children to attend a school in which a substantial number of the students are white. 194 believe racial conflicts would result from the disciplining

of white children by Negro teachers, only 2 expressing a contrary view, and 146 believe such conflicts would result from the discipling of Negro children by white teachers. 172 believe there would be increased danger of malicious destruction of school buildings and school busses. Every officer of the entire 198 who answered believes the majority of the people in his jurisdiction favors segregation.

North Carolina educates more Negroes than any other state in the Union. North Carolina employs more Negro teachers than any other state in the Union. The average Negro teacher in North Carolina has more college training and is better paid than the average white teacher. North Carolina's concern for the education of her Negro children is not a recently acquired concern. North Carolina's public school system is a state-wide system, not a county system. North Carolina has built this system in good faith and in reliance upon this Court's former interpretation of the Fourteenth Amendment. One of the sills upon which the entire structure rests is the belief, still firmly held by the overwhelming majority of North Carolinians, that separate schools for the Negro, Indian and white children are essential to the peace of the state and to the proper education of the children.

The Negro population of North Carolina is not scattered evenly throughout the state, but varies from negligible numbers in western counties to a majority of the total population in nine of the eastern counties. Appendix, Exhibits 1, 2, and 3. In North Carolina's cities, as in cities elsewhere, schools are located so that there will be less commingling of the Negro and white children in the same school building in cities than in rural areas, but most of North Carolina's Negroes and most of North Carolina's white people do not live in cities. North Carolina does not have a population of many racial and sub-racial groups. Practically all of the people of North Carolina are either Negro or Anglo-Saxon.

These are conditions which distinguish North Carolina from other states. These are conditions which must be taken into consideration in formulating any decree intended to apply directly or indirectly to the schools of North Carolina. To

ignore them is to ignore reality and the accumulated experience of four generations. A decree which would cause little or no dissension and confusion in the schools of Kansas may well make effective teaching impossible in North Carolina and may even result in the abandonment of public schools. That which is a mere preference in Illinois or California, may well be a condition precedent to a North Carolina child's going to any school at all.

ARGUMENT

I

A DECREE DIRECTING A SCHOOL BOARD OF A STATE TO ADMIT NEGRO CHILDREN FORTHWITH TO THE SCHOOLS OF THEIR CHOICE WITHIN THE LIMITS OF NORMAL GEOGRAPHIC SCHOOL DISTRICTING WOULD EXCEED THE AUTHORITY OF A FEDERAL COURT.

Courts of the United States may restrain an official or a school board acting under the authority of a state from denying to a Negro child the equal protection of the laws. This Court having determined that segregation in the public schools solely on the basis of race deprives Negro children of the equal protection of the laws, an injunction may properly issue from a federal court directing a state school board to desist from denying a Negro child admission to a public school solely because the child is a Negro, but a federal court may not properly require a state school board to perform affirmative duties or require it to follow procedures prescribed by the court. Such a decree would amount to the supervision by the Court of the actual operation of the public schools.

In the matter of judicial procedures this Court has said:

> "The Federal Constitution does not undertake to control the power of a state to determine by what process legal rights may be asserted, or legal obligations be enforced, provided the method of procedure gives rea-

> sonable notice and affords fair opportunity to be heard before the issues are decided."
> Honeyman v. Hanan, 302 U. S. 375, 58 S. Ct. 273, 82 L. Ed. 312 (1937).

That is, under the Due Process Clause of the Fourteenth Amendment, the federal courts may concern themselves only with the results of state laws and state administrative actions. If those results deprive a person of his life, liberty or property without due process of law, the federal courts may intervene to the extent of requiring the state to change the result, but the procedure or method by which the acceptable result is to be reached is a matter for state, not federal determination.

The same is true of the Equal Protection Clause of the Fourteenth Amendment. Thus, when a Negro had been convicted of a crime by a jury from which members of the Negro race were excluded, pursuant to a systematic, intentional, deliberate and invariable practice to exclude Negroes from juries, this Court reversed the result because the result violated the Equal Protection Clause, but remanded the case to the state court "for proceedings not inconsistent with" this Court's opinion, leaving to the state the choice of a procedure leading to a constitutional result. Patton v. State of Mississippi, 332 U. S. 463, 68 S. Ct. 184, 92 L. Ed. 76 (1948). When a state denied a Negro facilities for a legal education within its borders, this Court reversed the result because the result violated the Equal Protection Clause, but remanded the case to the state court "for further proceedings not inconsistent with" the opinion of this Court, leaving to the state the finding and selection of a new road leading to a constitutional result. State of Missouri v. Canada, 305 U. S. 337, 59 S. Ct. 232, 83 L. Ed. 208 (1938). When, by state action, Negroes were denied the right to vote because of their race, a federal court enjoined the election officials from reaching that result which it said violated the Fourteenth and Fifteenth Amendments, and this Court denied certiorari, but the federal courts did not go further than to enjoin the continued reaching of the unconstitutional result. No master was appointed to supervise future elections. No detailed

decree was issued setting forth procedures to be followed by election officials. The right of the state to adopt and administer election laws so as to reach a different result was not impaired. Rice v. Elmore, 165 F. (2d) 387, Fourth Circuit, 1947, cert. den. 333 U. S. 875, 68 S. Ct. 905, 92 L. Ed. 1151 (1948).

Section 5 of the Fourteenth Amendment empowers the Congress to enforce, by appropriate legislation, the provisions of the amendment. Whether Section 5 authorizes the Congress to enact legislation requiring state school boards forthwith to admit Negro children to the schools of their choice within the limits of normal geographic school districting is not now before the Court. Congress has not so provided. Congress has provided that when a person is deprived by state action of rights guaranteed by the Constitution a federal court may enjoin the reaching of the unconstitutional result, 28 U. S. C. A. 41 (1), but Congress, even if it has the power, has not granted to any federal court the authority to administer the admission of children to schools operated by a state or to control the state in its choice of a procedure leading to a constitutional result.

It is a matter of which judicial notice may be taken that virtually every school building in North Carolina is presently crowded to its physical capacity. If a substantial number of Negro children are admitted to what is now a school crowded with white children, a corresponding number of white children must attend another school or attend no public school at all. Thus, a decree requiring a school board in North Carolina forthwith to admit Negro children to the schools of their choice will, if a substantial number of them choose a school now used by white children, necessarily require the school board to deny to white children presently enrolled in that school the right to continue to attend it. A federal court may now enjoin a state school board from denying admission of Negro children to a specific state school building because of their race alone, but no federal court is authorized to take the assignment of children to specific state school buildings out of the hands of the state school officials and place it in the hands of Negro children.

This Court has decided in these cases that an unconstitutional result is reached when a school board, acting under state authority, denies a Negro child admission (1) to a public school, (2) solely on account of the child's race. There are, however, many ways leading to a different and constitutional result, if after an "agonizing reappraisal" of its public school system the state should determine to continue to operate it. In North Carolina, for example, the result now declared unconstitutional by this Court would not arise if any of the following courses among others should be taken: (1) Assignment of white and Negro children to schools on the basis of residence alone; (2) Segregation of children in schools on the basis of sex, the basis of intelligence tests, the basis of achievement tests, or any other basis except race, provided only that the basis has a reasonable relation to the proper conduct of the schools or to the maintenance of the public safety, morals, health or welfare (See, Hodding Carter, "The Court's Decision and the South," Reader's Digest, September, 1954); (3) Discontinuance of the present state-wide school system and leaving to each county or community the decision as to whether it will have public schools operated on the one or the other of these bases. See, Hodding Carter, "The Court's Decision and the South," supra. It is submitted that the choice to be made between these or other methods leading to a constitutional result is for the State of North Carolina.

II

IF THIS COURT HAS THE AUTHORITY TO ISSUE A DECREE REQUIRING THE ADMISSION FORTHWITH OF NEGRO CHILDREN TO SCHOOLS OF THEIR CHOICE WITHIN THE LIMITS OF NORMAL GEOGRAPHIC SCHOOL DISTRICTING, IT IS NOT REQUIRED TO DO SO, BUT IN THE EXERCISE OF ITS EQUITY POWERS CAN PERMIT A GRADUAL ADJUSTMENT FROM THE EXISTING SCHOOL SYSTEM TO A SYSTEM NOT BASED ON COLOR DISTINCTIONS.

This Court's decision on the merits in these cases gives

rise to a question of equity power for which no precise precedent has been found by the Attorney General of North Carolina, or, apparently, by any of the distinguished counsel representing the parties to these cases. The public schools and resulting social structure of North Carolina, and of at least eleven other states, rest, as a house rests upon a sill, upon this Court's former interpretation of the Fourteenth Amendment, now reversed. If there has been any other judicial decision so affecting fifty million people, that decision has not been found. As the editor of the Saturday Review (October 9, 1954, page 9) has said: "This historic decision cannot be considered apart from the laborious overhaul of a whole social apparatus which it may require." Consequently, the discussion of this Court's equity powers in the formulation of the remedy to be afforded the plaintiffs must proceed from analogies which are exceedingly remote.

The nuisance and anti-trust cases, to which the attention of the Court has previously been directed by the briefs of other counsel, involved huge investments by many people. However, the confusion likely to result from dividing even so vast an enterprise as was the American Tobacco Company pales into insignificance when compared with the uncertainties confronting the people of North Carolina, and other southern states, as a result of the decision on the merits of these cases. Thus, the decrees approved in anti-trust and nuisance cases throw but a flickering light on the problem here. Nevertheless, they do direct attention to the flexibility of equitable remedies and to the fundamental principles which should guide the Chancellor in the exercise of his unusual powers.

In United States v. American Tobacco Company, 221 U. S. 106, 31 S. Ct. 632, 55 L. Ed. 663 (1911) this Court affirmed the finding by the district court that the defendant was an illegal combination in restraint of trade. It did not, however, order its immediate dissolution, pointing out that to do so would endanger the public interest and property rights of innocent persons. The Court said:

> "In view of the considerations we have stated, we leave the matter to the court below to work out a compliance with the law without unnecessary injury to the public or the rights of private property." (p. 188)

In the similar and contemporaneous case of Standard Oil Company v. United States, 221 U. S. 1, 31 S. Ct. 502, 55 L. Ed. 619 (1911) the Court likewise instructed the district court to allow a reasonable delay in carrying out the decree of dissolution "in view of the magnitude of the interests involved and their complexity" and "in view of the possible serious injury to result to the public." In Associated Press v. United States, 326 U. S. 1, 65 S. Ct. 1416, 89 L. Ed. 2013 (1945) the Court also recognized that the fashioning of a decree in an anti-trust case is a matter resting largely in the discretion of the Court, saying, "A full exploration of facts is usually necessary in order properly to draw such a decree." In United States v. United States Steel Corporation, 251 U. S. 417, 40 S. Ct. 293, 64 L. Ed. 343 (1920), the Court recognized the propriety of making a distinction in the drafting of a decree between the case of persistent, systematic, lawbreakers masquerading under legal forms, and an organization which the Court found to be a violation of law but also found to have been developed in good faith, saying that in such cases "the public interest is of paramount regard."

In International Salt Company v. United States, 332 U. S. 392, 68 S. Ct. 12, 92 L. Ed. 20 (1947) the Court said with reference to the framing of a decree to compel compliance with the Anti-Trust Act:

> "The framing of decrees should take place in the district rather than in appellate courts. They are vested with large discretion to model their judgments to fit the exigencies of the particular case." (p.400)
> ACCORD: United States v. U. S. Gypsum Co., 340 U. S. 76, 95, 71 S. Ct. 160, 95 L. Ed. 89.

In Alexander v. Hillman, 296 U. S. 222, 56 S. Ct. 204, 80 L. Ed. 192 (1935), this Court said:

> "Treating their established forms as flexible, courts of equity may suit proceedings and remedies to the cir-

> cumstances of cases and formulate them appropriately to safeguard, conveniently to adjudge, and promptly to enforce substantial rights of all parties before them."

In his Equity Jurisprudence, 14th edition, section 28, Story says:

> "But Courts of Equity (as compared with courts of common law) are not so restrained. Although they have prescribed forms of proceeding, the latter are flexible, and may be suited to the different postures of cases. They may adjust their decrees so as to meet most if not all of these exigencies; and they may vary, qualify, restrain, and model the remedy so as to suit it to mutual and adverse claims, controlling equities, and the real and substantial rights of all the parties. Nay, more; they can bring before them all parties interested in the subject matter, and adjust the rights of all, however numerous; whereas Courts of Common Law are compelled to limit their inquiry to the very parties in the litigation before them, although other persons may have the deepest interest in the event of the suit. So that one of the most striking and distinctive features of Courts of Equity is that they can adapt their decrees to all the varieties of circumstances which may arise, and adjust them to all the peculiar rights of all the parties in interest; whereas Courts of Common Law (as we have already seen) are bound down to a fixed and invariable form of judgment in general terms, altogether absolute, for the plaintiff or for the defendant."

Pomeroy emphasizes the same flexibility of equitable remedies and the discretion which the Chancellor may and should exercise in formulating his decrees, saying in section 1338 of the fifth edition:

> "In determining whether an injunction will be issued to protect any right of property, to enforce any obligation or to prevent any wrong, there is one fundamental principle of the utmost importance, which furnishes the answer to any question, the solution to any difficulties which may arise.—The general principle may be stated as follows: Wherever a right exists or is created, by contract, by the ownership of property or otherwise, a violation of that right will be prohibited, *unless there*

> *are other considerations of policy or expediency which forbid a resort to this prohibitive remedy.*" (Emphasis added. See also, Sections 60 and 109.)

Perhaps the statement of these principles most pertinent to these cases is found in a letter from Lord Hardwicke to Lord Kames, quoted by Pomeroy in Section 60 of his treatise. Lord Hardwicke said:

> "Some general rules there ought to be for otherwise the great inconvenience of *jus vagum et incertum* will follow. And yet the Praetor must not be so absolutely and invariably bound by them as the judges are by the rules of the common law. For if he were so bound, the consequences would follow that he must sometimes pronounce decrees which would be materially unjust, since *no rule can be equally just in the application to a whole class of cases that are far from being the same in every circumstance.*" (Emphasis added.)

In United States v. American Tobacco Company, 221 U. S. 106, 31 S. Ct. 632, 55 L. Ed. 663 (1911), the Court found that the defendant was an unlawful combination in violation of the Sherman Anti-Trust Act, but in order not to cause undue hardship to innocent investors it allowed for its dissolution what it believed to be a reasonable time under all of the circumstances. A much longer time will be required to change one of the bases of a social order believed by many millions of people to be necessary to their well being, and which they and their fathers have built in reliance upon an interpretation of the Fourteenth Amendment affirmed and reaffirmed by former decisions of this Court.

In the exercise of its equity powers, which these plaintiffs have invoked, this Court is not required to consider these plaintiffs, and others similarly situated, to the exclusion of others not similarly situated. It may frame its decree so as to preserve both the rights of the plaintiffs and the peace of the United States. These cases, by reason of the numbers of people affected, the nature of the schools involved, and the great variety of local conditions which must be taken into account, are completely distinguishable, as to the appro-

priateness of the remedy, from Sweatt v. Painter, 339 U. S. 629, 70 S. Ct. 848, 94 L. Ed. 1114, Sipuel v. University of Oklahoma, 332 U. S. 631, 68 S. Ct. 299, 92 L. Ed. 247, and McLaurin v. Oklahoma State Regents, 339 U. S. 637, 70 S. Ct. 851, 94 L. Ed. 1149. It is not necessary in order to grant these plaintiffs and others similarly situated their constitutional rights that the public school system of North Carolina be subjected to grave danger of destruction. Even if it were, this Court may and should stay its hand because of the greater interest of the Negroes, Indians and white people of North Carolina, alike, in the maintenance of good public schools.

III

IF THIS COURT HAS THE AUTHORITY TO ISSUE A DECREE REQUIRING THE ADMISSION FORTHWITH OF NEGRO CHILDREN TO SCHOOLS OF THEIR CHOICE WITHIN THE LIMITS OF NORMAL GEOGRAPHIC SCHOOL DISTRICTING, IT SHOULD NOT DO SO, IF SUCH A DECREE IS TO BE A PATTERN TO BE FOLLOWED IN OTHER CASES ARISING IN OTHER STATES AND OTHER SCHOOL DISTRICTS.

In its opinion of May 17, 1954, this Court recognized the variances between the cases now before it and cases which may arise, saying:

> "(B)ecause of the great variety of local conditions, the formulation of decrees in these cases presents problems of considerable complexity."

The problems and their complexities are multiplied many times if consideration is given to all the schools of a single state. If all of the states now educating white and Negro children in separate schools are to be brought within the contemplation of the decree, even though they cannot be reached directly by it, the problems and their complexities

become infinite and their solution in a single decree impossible.

The diversity which the Court has recognized exists not only between state and state, but also between regions and communities within each state. Indeed, the differences between parts of a single state are often more pronounced than those between two states, each considered as a whole by averaging the differences to be found within its borders. If the public schools and the public peace are to be preserved for the benefit of the plaintiffs, and others, whether similarly situated or not, the decrees to be entered in the district courts in these cases must be framed to fit the conditions of Clarendon County, South Carolina, and Prince Edward County, Virginia, not some illusory community existing only in the imagination. Only a court conversant with conditions in these counties, including those not shown in the present records before this Court, and granted wide discretion can tailor a decree to fit those conditions.

It may well be true that to remand these cases without undertaking to supply the courts of first instance with specific standards to guide their further proceedings will mean a generation of litigation before an acceptable substitute can be found for the existing school systems in all of the southern states. Mr. Justice Jackson so suggested in the course of the oral argument of these cases at the October Term, 1953. But, standards, which do not fit the conditions in which a decree is to operate, do not guide. They only lead into confusion. Many of our principles of law and of our philosophy of government were hammered out through not one, but many generations of litigation. A generation of litigation is far preferable to the destruction of a social order which is the product of many generations of free men and women striving together for their mutual advancement. A generation of litigation is preferable to a generation of bitterness and strife between neighbors outside of the courts, to a generation of chaos inside the schoolroom, or a generation with no public schools at all.

It is, therefore, suggested that these cases should be remanded to the district courts with directions to frame de-

crees with respect to the admission of the Negro plaintiffs to public schools based upon facts and conditions which may be found to exist at such time. The Court should direct that the district courts should enter no final decrees until further hearings have been conducted and full consideration given to all the many factors which will be involved in adjusting to the revolutionary change in the operation of the public schools which this Court now requires. This would necessarily involve an important time element, available teaching staffs, adequate school buildings and equipment, and compliance with applicable local laws respecting the administration of these public schools as well as all other essential elements constituting the legal and practical aspects of school administration.

IV

A DECREE WHICH MAY BE WORKABLE UNDER CONDITIONS PREVAILING ELSEWHERE MAY HAVE GRAVE AND FAR REACHING CONSEQUENCES IF APPLIED TO THE PUBLIC SCHOOLS OF NORTH CAROLINA.

A.

DIVERSITY BETWEEN NORTH CAROLINA AND OTHER STATES

The diversity in local conditions which this Court has recognized in these cases is of course most pronounced as between southern states and northern and border states, although there is no such thing as a typical southern state in this respect. As has recently been stated in the Saturday Review:

> "The only single Southern attitude—in which he (the Southerner) can find no difference from the rest of the country—is that he wants to live in a white society. It is not this desire that differentiates him from his fellow-Americans, but the peculiar circumstances of his total society, and the hereditary conditioning of his historical

> circumstance. Other sections have never faced the problem of a mixed society. Whenever a community has accumulated a density of colored population the problem has been tacitly evaded by the creation of 'black belts,' as in New York and Chicago. Where individual Negroes formed any sizable percentage of a school, even in the excellent public-school system of New York, families who could afford to immediately moved their children to private schools or moved themselves to suburbs." Clifford Dowdey, A Southerner Looks at the Supreme Court, the Saturday Review, October 9, 1954, page 10.

At least four major differences distinguish North Carolina from most of the states outside the South: The number of Negroes in proportion to white people, the intermixture of white and Negro homes throughout rural areas, the general reaction to this Court's present interpretation of the Fourteenth Amendment, and the number of Negro teachers employed.

No state outside of the South has a population of which as many as 20% are Negroes. See, Appendix, Exhibits 4 and 5. Thirty-five states have populations in which less than 8% are Negroes. Thirteen states have populations in which less than 1% are Negroes. Even if every other condition were precisely the same, the intermixture of one Negro child with 99 white children in North Dakota is obviously a far different problem for a school administrator from the problem of commingling 71 Negro children with 29 white children in Northampton County, North Carolina, or 45 Negro children with 55 white children in Mississippi.

Kansas, whose statute has been held unconstitutional in these cases, has among its population less than one Negro for each 25 persons. This fact alone would make it far easier for the Board of Education in Topeka to commingle white and Negro children than for the school boards in Clarendon County, South Carolina, or Prince Edward County, Virginia, to do so. The disruption of the public schools in Milford, Delaware, as a result of the state's undertaking to commingle eleven Negroes in a formerly white high school, pursuant to this Court's opinion, has become a matter of common knowledge, but in all of Delaware there are only 13 Negroes to

every 87 white people. Even the border states of Kentucky and West Virginia have fewer than one Negro to 13 white people. Thus, even in these two states the commingling of white and Negro children in the public schools presents a far different prob'em from that which would be encountered by the school boards in most counties of North Carolina.

This, however, is not the only difference between the northern and border states on the one hand, and North Carolina, and other southern states on the other hand. The northern states which have the largest Negro populations are New York, Illinois, Pennsylvania, Ohio, Michigan, and New Jersey. In these states the Negro population is almost entirely an urban population. In the North, as in the South, Negroes who live in cities are not scattered throughout those cities but are concentrated principally in certain areas through the natural tendency of people to live in close proximity to other people like themselves. As a result, school district lines can be drawn so that there are relatively few Negro children in certain schools and relatively few white children in other schools. For the residents of those areas, North and South, the problem presented by the opinion of this Court in these cases is largely academic in nature. For most of the people who live in North Carolina the Court's opinion cannot be complied with so easily and, therefore, the questions presented are not academic but are questions, the answers to which must be found in the confusion of people required to change a public school system which is a vital part of their society. This is true because most North Carolinians, white and colored, do not live in cities but live in rural areas where the residences of white and Negro neighbors are interspersed.

A distinction of major significance in this connection between the northern states and North Carolina is that in the northern states the opinion of this Court in these cases was generally approved, whereas in North Carolina the opinion conflicts with deep seated convictions and has been generally regarded as extremely unfortunate. Of course, this Court may not allow its decisions as to the interpretation of the Constitution to be guided by public opinion, but, in deter-

mining the decree to be issued, a court of equity is not required to shut its eyes to reality, especially when the victims of an unwise decree will be children. The experience of our nation, during the period when the Eighteenth Amendment was in effect, demonstrates that a law cannot be successfully enforced by civil authorities when even a substantial minority of the people in a community believe it infringes upon their natural liberties. A court of equity may and should proceed cautiously in formulating a decree which undertakes to require the overwhelming majority of the people in one-third of the Union to change a basic principle upon which their public school systems have been built.

Another important aspect of the problem to be considered in North Carolina is that "the South is the land of opportunity for the Negro teachers." U. S. News and World Report, August 27, 1954, p. 35. North Carolina with very nearly the same Negro population as New York, employs five Negro teachers for every Negro teacher employed by New York. New York with 6 Negroes out of every 100 persons in its population, employs fewer than 2 Negroes for each 100 school teachers. North Carolina, with one Negro out of every 4 persons, employs more than one Negro teacher out of each four teachers. U. S. News and World Report, supra, pp. 36-37.

A distinguished Negro editor has said:

> "No place in the world do Negroes own and control as much as do those in the South. Atlanta is without question the Negro capital of the world. It is the center of Negro culture, education, business, and finance. And both Negroes and whites live, work, and operate business without either being conscious of the other's race.***
>
> "During the past 2 years I have spent more time in the South than I have in my office, and I have interviewed thousands of Negroes in all walks of life and I have found very few who favor mixed schools. They want their own schools, but equal facilities.***
>
> "Despite all of the hullaballoo about the liberal East and North, no Negro has been made head of a State college or university. Down South the woods are full of Negro

college and university presidents. Down in Texas a Negro college president of a State school gets $15,000 a year.

"What Negroes need to refresh their memories on is the fact that just a few years ago we were raising Cain because colored kids in the South were being taught by white teachers. We wanted them taught by Negroes. As Negroes qualified, Negro teachers replaced white teachers until now Negro teachers have completely taken over.

"Not too long ago Negroes went into court and demanded equal facilities in our schools. The courts ruled that they were right. All the Southern States embarked upon a school-building program never heard of before in the history of our Nation. And this effort to give Negroes equal school facilities is an honest one.—

"I have never contended that the South is a utopia, but I do contend that it offers the Negro his greatest opportunity. Last week as I looked at the Negro schools in St. Petersburg and Tampa, Fla., I felt proud of my race. Nowhere in the world do they have more beautiful schools than do the Negroes in Florida, Georgia, North and South Carolina, and the building program is not yet complete." Editor Davis Lee, Newark (N J.) Telegram, as quoted in the Congressional Record, June 11, 1954, pp. A4335-A4336.

With reference to Negro teachers, the U. S. News and World Report of August 27, 1954, also said:

"Negro teachers in the South, thousands of them, are to lose their jobs when segregation ends in public schools. If they are to go on teaching, the North will have to give them jobs. But openings there will be scarce, if present use of Negro teachers is any criterion. It is a problem that causes real concern among school officials. Even in the North, objections often are raised when Negroes are assigned to teach white children." (p. 35.)

128 out of 131 school superintendents in North Carolina believe they would find it impracticable to use Negro teachers in mixed classes. See, Appendix, Exhibits 6 and 7, Question 11. A court of equity in formulating its decree should con-

sider the effect of the decree upon Negro teachers as well as the effect upon Negro pupils.

The diversity of conditions between North Carolina and every other state in the Union, North or South, and between one part of North Carolina and another, cannot be fully presented to this Court without full hearings and litigation directly concerning schools in North Carolina, in which hearings the people of North Carolina have an opportunity to present evidence as to their own sociological, psychological, and educational conditions. However, for the purpose of demonstrating that these differences exist and are so great as to require different implementation of the Court's decision in these cases, a short account of the North Carolina school system and of its development is set forth in this brief. The people of North Carolina, both white and Negro, take a justifiable pride in the public school system which they have created, and have steadily improved, under statutes and administrative practices in conformity to the interpretation of the Fourteenth Amendment approved by this Court for sixty years, and by the Congress and the courts of the states since the Amendment was ratified in 1868.

B.

THE EXISTING NORTH CAROLINA PUBLIC SCHOOL SYSTEM

North Carolina, today, is educating more Negro children and employing more Negro teachers than any other state in the Union. She is educating them in a state-wide school system, which means that, except insofar as local tax supplements provide additional benefits, every child in North Carolina, regardless of race, residence or economic status, studies the same subjects and uses the same textbooks. The length of the school term is the same throughout the State and is the same for white children as for Negro children. This has been so for ten years.

Except where there are local tax supplements in effect, every teacher in North Carolina, having the same training and experience, and engaged in the same type of teaching,

receives the same salary. As a result of this, and of social and economic conditions outside of the schools, the teaching profession offers more financial inducement to highly qualified Negroes than it offers to white men and women of equal qualifications. For this reason the Negro teachers remain in the teaching profession longer, and receive salary increments based on experience. Consequently, the average salary of Negro teachers in North Carolina is greater than the average salary of white teachers in North Carolina, and has been so for ten years, or almost an entire public school generation. As a consequence of the same economic factor, the average Negro teacher in North Carolina has had more college training than has the average white teacher in North Carolina. This advantage in favor of the Negro schools has also existed for several years. Ashmore, The Negro and the Schools, p. 158.

Since the change in North Carolina from diverse county systems of public school education to a state-wide system, small rural schools have been consolidated into large schools, centrally located within the school district. The State furnishes to every child free transportation to and from those schools in state owned and operated school busses. The result of this consolidation program has been the replacement of the small, dilapidated, frame schoolhouse with large, modern, well-equipped, brick school buildings, more adequately staffed with better teachers teaching a more adequate curriculum. The cold biscuit in a paper sack has been replaced by a hot lunch in a well-equipped school cafeteria. The filthy, outside privy has been replaced with sanitary toilet rooms. Expenditures per pupil have increased far beyond the change in price levels. North Carolina today spends on its public schools 3.9% of its total income, being surpassed in this respect by only four other states in the Union, and being far ahead of the states of New York, Massachusetts, Michigan, Illinois, Ohio and Pennsylvania. Ashmore, The Negro and the Schools, pp. 115, 144-145.

C.

THE DEVELOPMENT OF THE NORTH CAROLINA PUBLIC SCHOOL SYSTEM.

This North Carolina school system, in which the Negroes have so great an interest, is not the result of an eleventh hour attempt to comply with the "separate but equal" doctrine approved by this Court in 1896. It is the result of over a century of devotion to and sacrifice for the education of both white and Negro children. It is an achievement of white and Negro neighbors working together in a peaceful, friendly state. It is an achievement in which both the white and Negro people of North Carolina take a justified pride, and which would not have been possible without their adherence to their belief in the doctrine of separate but equal schools.

North Carolina's firm belief that separate schools for the races will train both white and Negro children to live together in mutual respect and friendship, while mixed schools in North Carolina will cause racial conflicts is the result not of emotions and prejudice, but of sober, earnest thought by those who have known and lived in North Carolina, and who have desired to see her children educated so as to be prepared to demonstrate to all the world that two races as fundamentally different as the Anglo-Saxon and the Negro can live side by side in freedom, peace, and mutual respect. Experience has demonstrated the soundness of that belief. There is peace and friendship between white and Negro North Carolinians today which all North Carolinians desire to preserve, and which if properly used by the State Department will, we believe, prove to be a more effective answer to Communism, at home or abroad, than will a decree of this Court which proclaims equality but destroys the conditions precedent to an actual equality of opportunity to learn.

Whether or not this Court is willing to "turn the clock back" and consider the history of public education in North Carolina or the ratification of the Fourteenth Amendment, the attitude of North Carolina on this question can at least be better understood when it is realized that it has a long history of public schools operated on a segregated basis.

North Carolina was the one southern state which had a well-established system of public schools long before the Civil War, and has believed firmly in public education from the earliest days. In its Constitution of 1776, North Carolina provided for schools with salaries of the teachers to be paid by the public. In 1839 the finances of the state were in sufficiently good condition to permit this dream to be realized. Like the schools in the northern states, those established in North Carolina prior to the Civil War were open to white children only. Their establishment and development shows the great interest and faith which the people of North Carolina have had in public education from earliest times. By 1859 the school population of North Carolina was 230,000 and of these children 155,000 were enrolled in the public schools. There were then 2,758 public schools in operation in the state, and the average monthly salary paid to the teachers was higher than in Connecticut, New Hampshire, Ohio, Wisconsin, or Illinois. Knight, Public School Education in North Carolina, page 180. Even in the dark days of 1862, the public school system in North Carolina was maintained and fully 50,000 children were enrolled. Knight, Public School Education in North Carolina, p. 182. Although the fall of the Confederacy resulted in the loss of the Literary Fund, which was the mainstay of the public school system, and, therefore, brought about a temporary disorganization of the school system, the interest of the people of North Carolina in public education continued without abatement and was immediately extended to include the education of the newly freed Negro children.

After North Carolina had rejected the Fourteenth Amendment, its State Government was taken from the hands of her people and reconstituted in accordance with the wishes of the then majority of Congress. As a result, on July 2, 1868, the amendment was ratified in the name of North Carolina by a Legislature so chosen and constituted. On July 2, 1868, Governor Holden recommended its ratification in a message to this Legislature reading as follows:

"Executive Department of North Carolina
Raleigh
July 2, 1868

"Gentlemen of the Senate and House of Representatives:

"Allow me to congratulate you on the auspicious circumstances under which you have assembled. Our heartfelt gratitude is due to Almighty God for the suppression of the Rebellion, the preservation of the Union, the just and liberal principles on which it has been reconstructed, and the assurance that we have a future peace and tranquility. The first business to be performed by the Legislature will be the ratification of the Amendment to the Constitution of the United States, known as the Fourteenth Article, proposed by the Thirty-Ninth Congress. I respectfully recommend the immediate ratification of this Article.

Very respectfully,
W. W. Holden."

The Amendment was ratified the same day. Four months later the same governor wrote to the same Legislature as follows:

"Executive Department
Raleigh
November 17, 1868

"To the Honorable, the General Assembly of North Carolina:

"Gentlemen:

"It is proper that at your first regular session under the new Constitution, I should lay before you 'information on the affairs of the state,' and recommend to your consideration such measures as may be deemed expedient.

"The people of the state have reconstructed their government on the basis of equal rights of all.—

"I recommend, in the most earnest terms, that the General Assembly during its present session provide for a general and uniform system of public schools. *The schools for the white and colored children should be separate,* but in other respects there should be no difference in the character of the schools, or in the provision made to support them.—

"We have indeed a free Republic, in which every man in nearly every state, is fully the equal of every other man in political and civil rights. We have no distinctions founded on color or race, save those which are social in their character, but every one is free under the law to make his own way in life, and to earn a good name for himself and his children. The Union is over us all, states as well as people. There can be no appeal from its authority.—This government is in the hands of its friends and will be administered by them. The government of North Carolina is in the hands of its friends, and of the friends of the national government, and will be administered by them.—

Very respectfully
your obedient servant,
W. W. Holden."

(Emphasis added.)

Thus, the subsequently impeached governor of North Carolina recommended to the Legislature which he called, "the friends of the national government," both that it ratify the Fourteenth Amendment and, after the amendment was ratified, that it set up a system of separate schools for the races. The same Legislature, "the friends of the national government," did both.

In his inaugural address, two days after the Fourteenth Amendment had been ratified by the Legislature pursuant to his recommendation, Governor Holden said:

"It does not follow, nor does the Constitution require, that the white and colored races shall be educated together in the same schools. It is believed to be better for both and more satisfactory to both, that the schools should be distinct and separate."

This Legislature contained 38 Radicals (Republicans) in the Senate and 80 in the House. There were only 12 Conservatives (Democrats) in the Senate and 40 in the House. Knight, Public School Education in North Carolina, p. 231.

Less than two weeks after the amendment had been ratified, the House adopted by a vote of 91 to 2 a resolution proposed by Representative Bowman, Republican Chairman of the Committee on Education, reading as follows:

> "That it is the duty of this and of all future General Assemblies of North Carolina to provide for and continue a system of free public schools for both races, but at the same time to provide that the white and colored children of the state, shall be taught in separate schools." House Journal, 1868, p. 54.

The resolution was adopted by the Senate by vote of 26 to 1. Senate Journal 1868, pp. 237-239.

While Senator Sumner's Civil Rights Bill to compel mixed schools was pending in Congress in 1874, Mr. Alexander McIver, State Superintendent of Public Instruction, was called upon for his opinion as to the probable effects on the public schools in North Carolina if the bill became a law. He replied:

> "No legislation in favor of mixed schools has ever been attempted in this State. Public sentiment on this subject is all one way. Opposition to mixed schools is so strong that if the people are free to choose between mixed schools and no schools, they will prefer the latter. The friends of education would therefore deprecate and most sincerely deplore any congressional legislation which might tend to force mixed schools upon the people." Knight, Public School Education in North Carolina, p. 254.

At the same time Dr. Barnas Sears, General Agent of the Peabody Board, who had resigned the presidency of Brown University in Rhode Island to accept this position, reported to his board on the subject. That board, in 1867, at the time of the establishment of the trust by Mr. Peabody of Massachusetts, included in its membership General Grant, Admiral Farragut, Mr. Hamilton Fish of New York, Mr. George W. Riggs of Washington, Bishop Charles McIlwaine of Ohio, Mr. Robert Winthrop of Massachusetts, and other northern and southern gentlemen equally interested in the welfare of the colored people and the education of all the people in the southern states, the overwhelming majority being from the North. As a result of the board's study of Dr. Sears' report it unanimously adopted in 1874 a resolution reading as follows:

> "The prospects and hopes of the public systems of edu-

> cation in the South will receive a serious, if not fatal blow, from any legislation which should make such systems of education maintainable only upon the scheme of 'mixed schools' as the organization requisite for such public education."
>
> Proceedings of the Peabody Board of Trustees, Volume I, Page 411; Knight, Public School Education in North Carolina, p. 255.

Thus, in North Carolina, while the Fourteenth Amendment was being debated and ratified, and in the years immediately following its adoption, the Carpetbagger, the northern gentleman, the Scalawag and the southern gentleman were in complete agreement on two things: (1) The Fourteenth Amendment did not prevent the state from establishing separate schools for the white children and the Negro children; (2) The establishment and continuation of such separate schools was necessary and desirable.

The overwhelming majority of North Carolinians today, notwithstanding their respect for this Court, are still in agreement on both of those points. Appendix, Exhibits 6, 7 and 8. That is the reason a decree of this Court wholly acceptable, and even welcomed in another state, may well destroy public education in North Carolina.

A Convention to propose amendments to the North Carolina Constitution of 1868 was called by the General Assembly of 1875, pursuant to a referendum vote of the people. The Convention was composed of 120 delegates. The delegates were almost evenly divided between the two major political parties—Democratic and Republican.

The Journal, page 105, shows a resolution was introduced providing that the children of the white and colored races should be taught in separate public schools.

The Journal, page 130, shows that a substitute resolution was offered in the exact language that was afterwards adopted, viz., "and the children of the white race and the children of the colored race shall be taught in separate public schools but there shall be no discrimination in favor of or to the prejudice of either race." The foregoing was offered as an amendment to Article 9, Section 2, of the State Constitution

of 1868 and afterwards in the Convention was known as Ordinance No. 28, and is a part of the present State Constitution.

It is noteworthy that W. T. Faircloth, a delegate from Wayne, and afterwards a Republican Chief Justice of the Supreme Court of North Carolina, and Albion W. Tourgee, a Carpetbagger and Superior Court Judge and a delegate from Guilford County, each voted for the resolution.

The statement is sometimes made that the people of the northern states do not object to the race problem being solved by the southern states, but they want the southern states to start doing something about it. The answer, both in general and so far as schools are concerned, is that North Carolina started doing something about it in 1868 and has continued to do something about it for 86 years. The record of the separate schools of North Carolina in those years is as follows:

PUBLIC SCHOOL ENROLLMENT

(Source: Superintendent of Public Instruction of North Carolina.)

YEAR	WHITE		NEGRO	
	Population of School Age (6-20 years)	Enrolled In Public Schools	Population of School Age (6-20 years)	Enrolled In Public Schools
1874	242,768	119,083	127,192	55,000
1884	314,293	167,059	189,988	111,239
1895	403,812	245,413	217,437	128,150
1905	469,646	325,290	226,976	148,821
1915	540,410	418,902	260,987	187,448
1925	643,572	559,396	297,911	250,438
1935	759,308	616,314	340,490	276,334
1945	717,390	562,621	331,218	250,205
1951	773,003	636,505	345,280	273,272
1952	774,709	641,081	337,827	273,188
1953	792,043	652,622	339,636	276,401

TEACHERS

(Source: Superintendent of Public Instruction of North Carolina.)

YEAR	NUMBER		ENROLLMENT PER TEACHER		AVERAGE ANNUAL SALARY	
	White	Negro	White	Negro	White	Negro
1884	.....	.....	.....	.....	$ 69.58	$ 64.85
1895	.....	.....	.....	.....	75.73	67.19
1905	7,005	2,682	46.4	55.5	148.22	105.10
1915	10,584	3,291	39.6	57.0	285.59	149.66
1925	16,986	5,355	32.9	46.8	835.11	455.41
1935	16,159	6,497	38.1	42.5	620.93	415.31
1945	17,392	7,142	32.4	35.0	1,294.34	1,304.46
1950	19,924	7,567	31.4	35.5	2,535.24	2,628.69
1951	20,560	7,835	31.0	34.9	2,807.74	2,910.26
1952	20,885	8,031	30.7	34.0	.....	.....

HIGH SCHOOL GRADUATES

(Source: Superintendent of Public Instruction of North Carolina.)

YEAR	WHITE	NEGRO
1925	8,246	564
1930	13,457	1,687
1935	18,547	2,826
1940	25,576	4,504
1945	21,981	4,948
1950	24,226	6,259
1951	24,288	6,524
1952	24,930	7,110
1953	26,386	7,848

These accomplishments of a single state's educational program, making use of separate schools for the races, vindicates the wisdom of the agreement reached in 1868 by Carpetbagger, Scalawag, Confederate veteran, and northern phil-

anthropist on the proposition that if there is any slight denial of individual liberty inherent in the separate school system, it is greatly outweighed by the benefits to all the people from a public school system free from racial hatred and strife, and shows that the chief beneficiaries of this system have been the Negro people.

D.

THE FUTURE OF PUBLIC SCHOOLS IN NORTH CAROLINA IF IMMEDIATE INTEGRATION IS DIRECTED BY THE COURT

The people of North Carolina know the value of the public school. They also know the value of a social structure in which two distinct races can live together as separate groups, each proud of its own contribution to that society and recognizing its dependence upon the other group. They are determined, if possible, to educate all of the children of the State. They are also determined to maintain their society as it now exists with separate and distinct racial groups in the North Carolina community. They strongly oppose creating conditions in the public schools which tend to amalgamize the white and Negro races.

This Court has never held that the United States Constitution requires any state to educate any child. Neither has this Court ever held that the education of children must be conducted in schools attended by children of both races. In its opinion of May 17, 1954, this Court said only that segregation of children *in public schools* deprives the children of a minority group of equal educational opportunities, and then only when the segregation is *solely on the basis of race.*

Clearly, justice demands that a state, which has evolved a public school system in conformity to this Court's previous interpretation of the Fourteenth Amendment, and which has in good faith floated bond issues for many millions of dollars and invested the proceeds in school properties, be allowed to choose between constitutional alternatives in calmness and after mature deliberation. A court of equity is not required

to compel such a state forthwith to revamp its entire public school system under the threat of contempt citations, nor is it required to compel such state to select that alternative which the Court might choose.

The Legislature of North Carolina is the only body which can determine the policy to be followed in North Carolina in this matter. There has been no session of the North Carolina Legislature since the opinion of this Court in these cases was issued. Thus, there is no one now authorized to state what method North Carolina will adopt in order to reach its dual objectives of education for every child and maintenance of racial integrity in accordance with the United States Constitution as now interpreted by this Court.

The people of North Carolina firmly believe that the record of North Carolina in the field of education demonstrates the practicability of education of separate races in separate schools. They also believe that the achievements of the Negro people of North Carolina demonstrate that such an educational system has not instilled in them any sense of inferiority which handicaps them in their efforts to make lasting and substantial contributions to their state. A social order which is the product of three centuries, and a public school system which is the product of one century of conformity to the Constitution as interpreted by this Court and by Congress, cannot be transformed overnight into an entirely different social order and educational system notwithstanding the great respect which the people of North Carolina have for constitutional government and for this Court.

At least the following dangers will result in North Carolina from a decree requiring immediate intermixture of white and Negro children in the public schools throughout North Carolina: (1) Public schools may be abolished; (2) If the public schools are not abolished, the presence in the same classroom of white children and Negro children may well bring about daily confusion, physical conflicts, ridicule of one group by another, and other conditions which will make it difficult for children to study and teachers to teach; (3) If public schools are not abolished, parents financially

able to do so may send their children to private schools, and public schools will come to be regarded as a dole to paupers, repulsive to everyone, black or white, having that pride and self respect essential to good citizenship in a democracy; (4) Conflicts in the schoolroom, on the playground, and between parents and teachers may lead to racial bitterness in a community and bring to North Carolina the bloody race riots which have disgraced cities and states where justifiable racial pride among both Negroes and white people has been ignored.

That these are not figments of imagination, but are clear and present dangers is the opinion of the overwhelming majority of North Carolina school superintendents (Appendix, Exhibits 6 and 7) and North Carolina police officers (Appendix, Exhibit 8).

E.

DIVERSE CONDITIONS WITHIN NORTH CAROLINA

(a) *Distribution of Negro Population.*

According to the United States Census of 1950, almost exactly one-fourth of North Carolina's population of 4,061,929 are Negroes. Approximately 30,000 are Indians, for whom the State now maintains schools separate and apart from either the schools for white children or the schools for Negro children. The racial loyalties of the Indians of North Carolina are as strong as those of either of the other races, perhaps stronger. The Indians will be as resentful of any compulsory integration of their children with the children of the other races as will be the people of either the white or the Negro race. The overwhelming majority of the white people of North Carolina are of English or Scotch descent and are native-born North Carolinians. The absence in North Carolina of sizable minorities of white people of non-English origins results in a race consciousness and a race pride among the people of North Carolina much more clearly defined than that to be found in states with large metropolitan areas pop-

ulated by many racial and subracial groups.

However, the one million Negroes and three million white people in North Carolina are not scattered evenly throughout the State. See Appendix, Exhibit 2. In the extreme western part of the State there are relatively few Negroes. The 1950 census shows that Graham County, for example, has 6,665 white residents and only 10 Negroes.* At the other extreme is Northampton County, in the northeastern part of the State, with 18,189 Negroes and only 10,182 white residents. There are nine counties in North Carolina (Northampton, Warren, Hertford, Bertie, Halifax, Hoke, Gates, Edgecombe, and Martin) which have more Negro residents than white residents. Eight of these are contiguous and lie in the northeastern part of the State next to the Virginia border, the ninth (Hoke) being near the South Carolina border in the south central portion of the State. On the other hand, there are twenty-seven counties in the State in which the Negro population is less than 10% of the total. These counties are mountain counties in the far western portion of the State with the exception of Randolph County, in the Piedmont area, and Dare County, on the coast. Twenty-one counties, most of which lie in the Piedmont section, which is the most industrialized part of the State, have Negro populations varying from 10% to 25% of the total, and forty-three counties, lying principally in the east and central portions of the State, have Negro populations varying from 25% to 50% of the total.

While the proportion of Negro children and white children enrolled in the public schools does not follow precisely the division of the total population by counties, obviously the far western counties of North Carolina have very few Negro school children in their schools, the Piedmont counties have more, the eastern and southern counties have even more, and the greatest enrollment of Negro children in the public

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* The census appears to be in error at this point, since inquiry of officials of Graham County discloses that there are no Negroes residing in that county and none have resided there for many years, if ever.

schools occurs in Hoke County and in the eight northeastern counties of Northampton, Warren, Hertford, Bertie, Halifax, Gates, Edgecombe, and Martin.

It is not correct to assume that a county in which there are but a few Negroes will be a county in which there is little race consciousness, or that the county in which there are many Negroes is a county in which there are dangerous racial tensions and antipathies under the present social structure and school organization. The scarcity of Negroes in a given locality may indicate racial antagonisms so deep and severe that the Negroes prefer to live elsewhere. However, it is quite apparent that the intermixing of white children and Negro children in the same schoolroom presents a far different problem in a county where there are 10 Negroes to 6,665 white people from that which it presents in a county in which the two races are equally numerous, or in a county in which there are 18,000 Negroes to 10,000 white people. It could well be that the 10 Negroes in Graham County, for example, might include only one of school age. Granting that the racial loyalties and antipathies are as strong in the one county as in the other, it is obvious that the admission of one Negro child to one of the schools in Graham County would not create the administrative and instructional problems which would arise from an attempt to mix in schools all over Northampton County the children of 18,000 Negroes and 10,000 white people. A decree which would be an annoyance in Graham County could well bring disaster in Northampton.

(b) *Retarded children.*

In North Carolina, as elsewhere, (Report of the Second Regional Conference, State Board of Education and Chief State School Officers, Atlanta, Georgia, September 5-7, 1954, p. 36) achievement tests and intelligence tests taken by the Negro children and the white children in the same counties show the average white child attained a substantially higher rank than the average Negro child, although there were many instances of individual Negroes who showed remarkably superior intellect and equally superior achievement. No doubt, the explanation of this fact is a complex one. It seems

certain that the explanation goes far beyond the schoolroom since, as shown above, the Negro children in North Carolina have been receiving their training in the schools from higher paid teachers than have the white children. Whatever the explanation, the fact remains.

A study of the ages of the children in the North Carolina schools in the year 1949-1950, the last year for which such figures are available shows that in the elementary schools 1.69% of the white children in school were under the normal age for their respective grades, 80.84% were of normal age for their grades, 10.71% were one year over age, 4.47% two years over age, 1.59% three years over age, 0.52% four years over age, and 0.18% five years over age. Among the Negro children, 3.42% were under age, only 62.63% were of normal age, 15.70% were one year over age, 9.18% were two years over age, 4.99% three years over age, 2.45% four years over age, and 1.63% five years over age. Thus, one white child out of six was retarded, as compared with one Negro child out of three. See, State School Facts, published by the North Carolina Department of Public Instruction, January, 1952.

The same study shows that in the high schools 4.31% of the white children were under normal age as compared with 8.82% of the Negroes under normal age. 78.70% of the white children were normal age for their respective grades whereas only 57.87% of the Negro children were of normal age for their respective grades. 11.94% of the white children were one year over age as compared with 18.64% of the Negro children who were one year over age. 3.69% of the white children and 8.89% of the Negro children were two years over age. 1.01% of the white children and 3.94% of the Negro children were three years over age. 0.24% of the white children and 1.31% of the Negro children were four years over age. 0.11% of the white children and 0.53% of the Negro children were five years over age. Thus, in high school also, one white child out of six was retarded as compared with one Negro child out of three.

Obviously, it would create more numerous and more serious administrative and instructional difficulties to put in the

same classrooms with white children the thousands of Negro children in Northampton County, one-third of whom are retarded, than it would cause to put into the classrooms of Graham County a single Negro child or even two Negro children, even if both of them should happen to be in the retarded one-third.

(c) *Urban and Rural Distribution of Negroes.*

Not only are the counties and sections of North Carolina different in the matter of the ratio of the Negro population to the total population, but they also differ in that the eastern half of the State, in which the overwhelming preponderance of the Negro population resides, is predominately an agricultural area. It is in this section primarily that the farming is done by the tenant farming system. In these eastern counties of the State the Negro population is primarily a rural population. Likewise, the white population of these counties is primarily a rural or small town population. In the Piedmont area, with its relatively smaller Negro population, manufacturing is concentrated. Farms, generally, are operated by the owner and his family. The Negro population of these counties tends to concentrate in cities and towns. In Southern cities and towns, just as in the North, residential segregation prevails apart from law. In these cities and towns there are schools now attended separately by white and Negro children. The Negro school building is located in the Negro section of the town. The white school building is located in the white section of the town. Normal geographic school districting will normally result in a continuation of separate schools for the separate races in such a community. There will, of course, be a few families of one race living in an area generally occupied by families of the other race. Most of these may be expected to prefer to cross the district line so as to attend the school they have been attending, and this would not violate any decision heretofore made by this Court. But even if such voluntary crossing of the district line is not permitted, the problem will not be nearly so difficult from an administrative and instructional point of view in cities and towns as it will be in rural communities, because in the cities and towns it will be akin to that in counties with

only a few Negroes. Therefore, the problem of mixing white children and Negro children in the public schools in North Carolina will present a far different problem in the industrial Piedmont area from that presented in the rural, agricultural, eastern half of the State, where the overwhelming majority of North Carolina's one million Negroes live. A decree which would be an irritant in a city could completely disrupt the rural schools of the same county.

F.

THE NORTH CAROLINA SCHOOL BUS SYSTEM

The opinions expressed by school superintendents and police officers (Appendix, Exhibits 6, 7 and 8) indicate that the mixture of the races in school busses is the most difficult problem confronting the school authorities in North Carolina as a result of this Court's opinion of May 17, 1954.

The State of North Carolina in recent years has carried on an intensive program of consolidation of schools for the purpose of improving the quality of the schools and providing a more extensive curriculum. Small rural schools, both elementary and high school, have been merged into large schools, with modern buildings and equipment, offering increased educational advantages to the white and Negro children in rural areas. This has necessitated the transportation of the majority of all the school children in North Carolina by school bus.

The State of North Carolina operates 7,200 public school busses. It transports to and from school each day 452,000 children, which is approximately one-ninth of the total population of the State. Over 6,000 of these busses are driven by high school students. No adult now rides on most of them. Approximately 2,000 are now used for the transportation of Negro children, 5,000 for the transportation of white children, and 85 are used for the transportation of Indian children. Practically every school bus in the State is crowded beyond its normal seating capacity. The busses travel over all kinds of country roads. Children in the first grade and in the high school ride on the same bus. To require that

Negro children and white children be commingled forthwith on these buses, without adult supervision and police protection, is to invite conflicts on the bus, which will make riding on them so hazardous few parents will consent to their children's using them. This is a substantial danger a court of equity may well consider in formulating its decree.

CONCLUSION

The people of North Carolina have evolved a school system which, while far from the goals they have set for it, is an excellent school system. It is a school system in which children, in all parts of North Carolina and of all races, receive substantially equal opportunities for an education preparing them to assume the responsibilities of citizens under a constitutional government. It is a school system for which there is no presently available substitute in North Carolina. If it is destroyed or seriously impaired, generations of children of North Carolina will be severely handicapped, and the Negro children will be the greater losers.

As Mr. Clifford Dowdey, writing in The Saturday Review, said:

> "It is the gradation, the variation of necessary adjustments, which makes the execution of the Court's decision in the South anything except an abstraction on the road to equality. The human conditioning of environments being what it is, and individual circumstances varying as they do, it would look at this moment as if the historic decision might create historic chaos—unless, in October, when the Court listens to representatives of the locally affected scenes, it truly considers the real problems of the Southern society in which the Negro lives. Otherwise there will be a definite roadblock in the Negro's sorrowful journey toward his mortal dignity and full citizenship."
> Clifford Dowdey, The Saturday Review, October 9, 1954, p. 38.

It is respectfully submitted that in view of the good faith with which the people of North Carolina have evolved their

present excellent school system through the sacrifice of four generations, in reliance upon this Court's interpretation of the Fourteenth Amendment, the people of North Carolina are entitled in simple justice and equity to the entry of such a decree in these cases as will not seriously impair or destroy their public schools.

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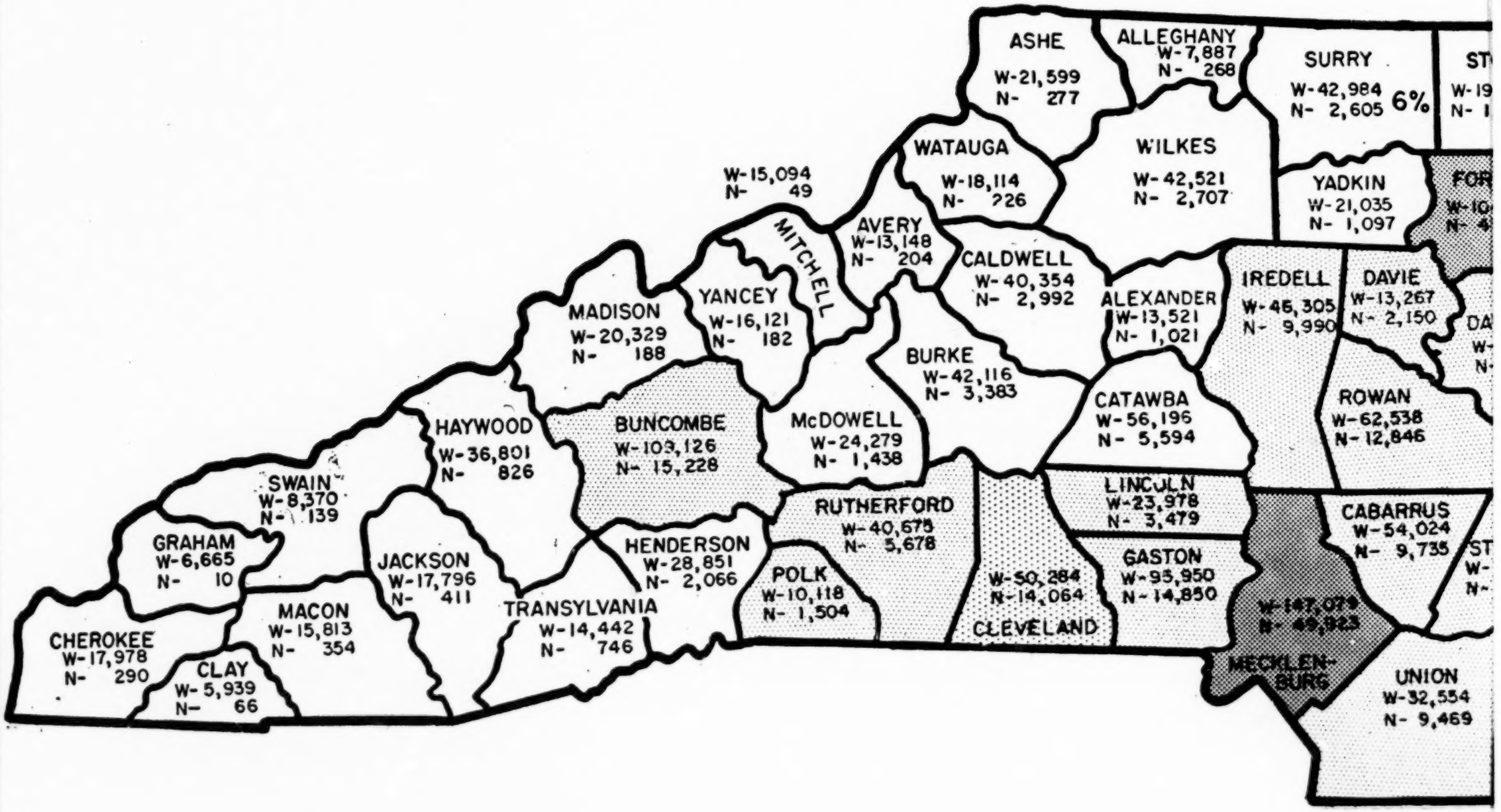
Assistant Attorney General of North Carolina

WHITE AND NEGRO F



W- WHITE
N- NEGRO

PERCENTAGE OF NEGRO POPULATION

- 0%-10%
- 10%-25%
- 25%-50%
- OVER 50%

EXHIBIT 1

0 POPULATION BY COUNTIES IN 1950

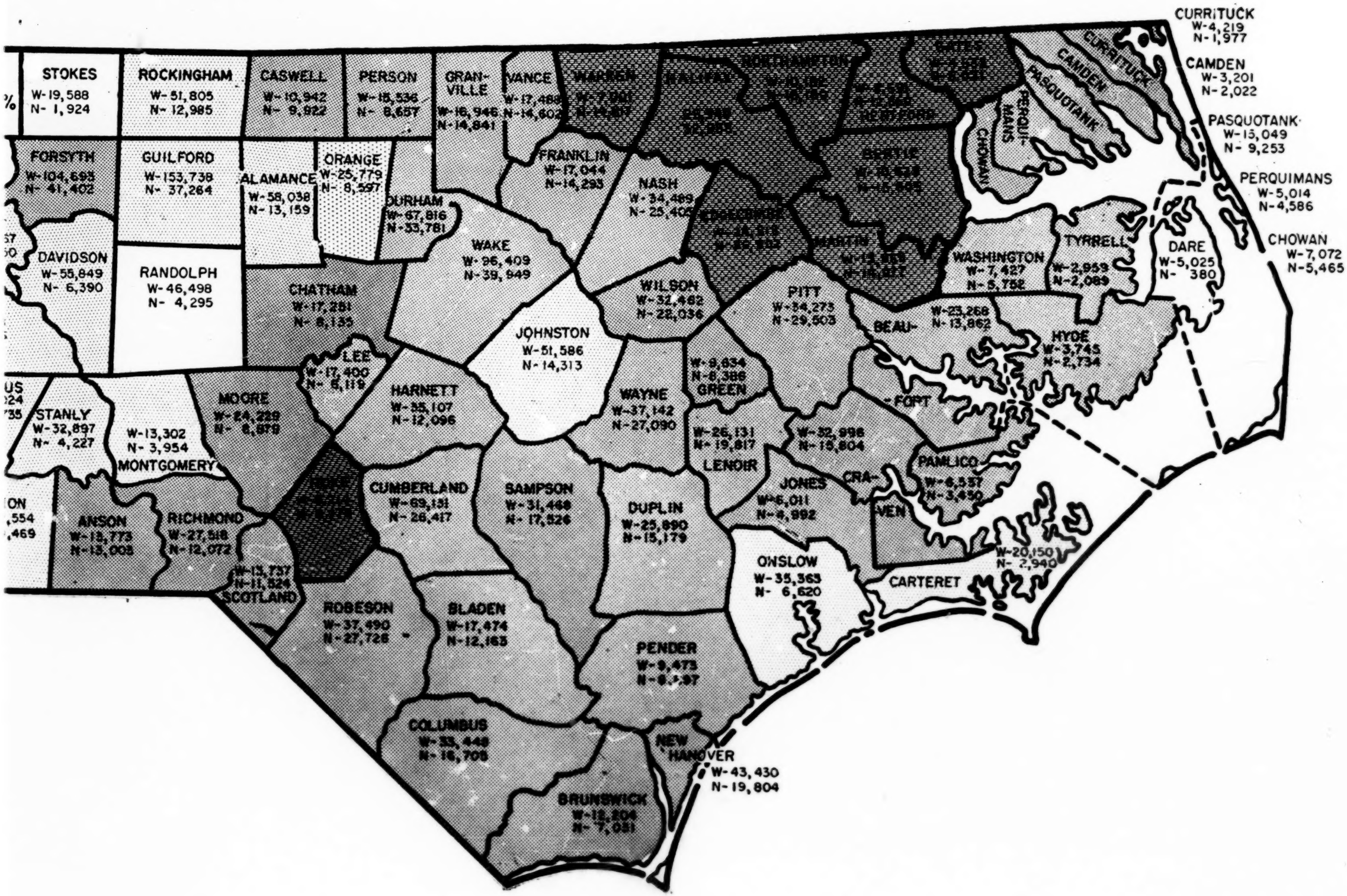


EXHIBIT 2

TABLE I

North Carolina Population By Counties And Races, 1950

County	Total Population	White Population	Negro Population	% White	% Negro
Alamance	71,220	58,038	13,159	81.49	18.48
Alexander	14,554	13,521	1,021	92.90	7.02
Alleghany	8,155	7,887	268	96.71	3.29
Anson	26,781	13,773	13,003	51.43	48.55
Ashe	21,878	21,599	277	98.72	1.27
Avery	13,352	13,148	204	98.47	1.53
Beaufort	37,134	23,268	13,862	62.66	37.33
Bertie	26,439	10,628	15,809	40.20	59.79
Bladen	29,703	17,474	12,163	58.83	40.95
Brunswick	19,238	12,204	7,031	63.44	36.55
Buncombe	124,403	109,126	15,228	87.72	12.24
Burke	45,518	42,116	3,383	92.53	7.43
Cabarrus	63,783	54,024	9,735	84.70	15.26
Caldwell	43,352	40,354	2,992	93.08	6.90
Camden	5,223	3,201	2,022	61.29	38.71
Carteret	23,059	20,150	2,904	87.38	12.59
Caswell	20,870	10,942	9,922	52.43	47.54
Catawba	61,794	56,196	5,594	90.94	9.05
Chatham	25,392	17,251	8,135	67.94	32.04
Cherokee	18,294	17,978	290	98.27	1.59
Chowan	12,540	7,072	5,465	56.40	43.58
Clay	6,006	5,939	66	98.88	1.10
Cleveland	64,357	50,284	14,063	78.13	21.85
Columbus	50,621	33,448	16,705	66.08	33.00
Craven	48,823	32,996	15,804	67.58	32.37
Cumberland	96,006	69,131	26,417	72.01	27.52
Currituck	6,201	4,219	1,977	68.04	31.88
Dare	5,405	5,025	380	92.97	7.03
Davidson	62,244	55,849	6,390	89.73	10.27
Davie	15,420	13,267	2,150	86.04	13.94
Duplin	41,074	25,890	15,179	63.03	36.96
Durham	101,639	67,816	33,781	66.72	33.24
Edgecombe	51,634	24,818	26,802	48.07	51.91
Forsyth	146,135	104,693	41,402	71.64	28.33

TABLE I (CONTINUED)

County	Total Population	White Population	Negro Population	% White	% Negro
Franklin	31,341	17,044	14,293	54.38	45.60
Gaston	110,836	95,950	14,850	86.57	13.40
Gates	9,555	4,532	5,021	47.43	52.55
Graham	6,886	6,665	10	96.79	0.15
Granville	31,793	16,946	14,841	53.30	46.68
Greene	18,024	9,634	8,386	53.45	46.53
Guilford	191,057	153,738	37,264	80.47	19.50
Halifax	58,377	25,349	32,988	43.42	56.51
Harnett	47,605	35,107	12,096	73.75	25.41
Haywood	37,631	36,801	826	97.79	2.19
Henderson	30,921	28,851	2,066	93.31	6.68
Hertford	21,453	8,591	12,860	40.05	59.94
Hoke	15,756	6,214	8,778	39.44	55.71
Hyde	6,479	3,745	2,734	57.80	42.20
Iredell	56,303	46,305	9,990	82.24	17.74
Jackson	19,261	17,796	411	92.39	2.13
Johnston	65,906	51,586	14,313	78.27	21.72
Jones	11,004	6,011	4,992	54.63	45.37
Lee	23,522	17,400	6,119	73.97	26.01
Lenoir	45,953	26,131	19,817	56.86	43.12
Lincoln	27,459	23,978	3,479	87.32	12.67
McDowell	25,720	24,279	1,438	94.40	5.59
Macon	16,174	15,813	354	97.77	2.19
Madison	20,522	20,329	188	99.06	0.92
Martin	27,938	13,858	14,077	49.60	50.39
Mecklenburg	197,052	147,079	49,923	74.64	25.33
Mitchell	15,143	15,094	49	99.68	0.32
Montgomery	17,260	13,302	3,954	77.07	22.91
Moore	33,129	24,229	8,879	73.14	26.80
Nash	59,919	34,489	25,405	57.56	42.40
New Hanover	63,272	43,430	19,804	68.64	31.30
Northampton	28,432	10,182	18,189	35.81	63.97
Onslow	42,047	35,365	6,620	84.11	15.74
Orange	34,435	25,779	8,597	74.86	24.97
Pamlico	9,993	6,537	3,450	65.42	34.52
Pasquotank	24,347	15,049	9,253	61.81	38.00
Pender	18,423	9,473	8,897	51.42	48.29

TABLE I (CONTINUED)

County	Total Population	White Population	Negro Population	% White	% Negro
Perquimans	9,602	5,014	4,586	52.22	47.76
Person	24,361	15,536	8,657	63.77	35.54
Pitt	63,789	34,273	29,503	53.73	46.25
Polk	11,627	10,118	1,504	87.02	12.94
Randolph	50,804	46,498	4,295	91.52	8.45
Richmond	39,597	27,518	12,072	69.50	30.49
Robeson	87,769	37,490	27,726	42.71	31.59
Rockingham	64,816	51,805	12,985	79.93	20.03
Rowan	75,410	62,538	12,846	82.93	17.03
Rutherford	46,356	40,675	5,678	87.74	12.25
Sampson	49,780	31,468	17,526	63.21	35.21
Scotland	26,336	13,737	11,524	52.16	43.76
Stanly	37,130	32,897	4,227	88.60	11.38
Stokes	21,520	19,588	1,924	91.02	8.94
Surry	45,593	42,984	2,605	94.28	5.71
Swain	9,921	8,370	139	84.37	1.40
Transylvania	15,194	14,442	746	95.05	4.91
Tyrrell	5,048	2,959	2,089	58.62	41.38
Union	42,034	32,544	9,469	77.45	22.53
Vance	32,101	17,488	14,602	54.48	45.49
Wake	136,450	96,409	39,949	70.66	29.28
Warren	23,539	7,901	14,817	33.57	62.95
Washington	13,180	7,427	5,752	56.35	43.64
Watauga	18,342	18,114	226	98.76	1.23
Wayne	64,267	37,142	27,090	57.79	42.15
Wilkes	45,243	42,521	2,707	93.98	5.98
Wilson	54,506	32,462	22,036	59.56	40.43
Yadkin	22,133	21,035	1,097	95.04	4.96
Yancey	16,306	16,121	182	98.87	1.12

Source: Population data from the U. S. Bureau of the Census, 1950.

EXHIBIT 3

TABLE II

NORTH CAROLINA COUNTIES BY PERCENTAGE OF NEGRO POPULATION, 1950

I. Counties with over 50% Negro population

COUNTY	% WHITE	% NEGRO
Northampton	35.81	63.97
Warren	33.57	62.95
Hertford	40.05	59.94
Bertie	40.20	59.79
Halifax	43.42	56.51
Hoke	39.44	55.71
Gates	47.43	52.55
Edgecombe	48.07	51.91
Martin	49.60	50.39

II. Counties with 25% to 50% Negro population

COUNTY	% WHITE	% NEGRO
Anson	51.43	48.55
Pender	51.42	48.29
Perquimans	52.22	47.76
Caswell	52.43	47.54
Granville	53.30	46.68
Greene	53.45	46.53
Pitt	53.73	46.25
Franklin	54.38	45.60
Vance	54.48	45.49
Jones	54.63	45.37
Scotland	52.16	43.76
Washington	56.35	43.64
Chowan	56.40	43.58
Lenoir	56.86	43.12
Nash	57.56	42.40
Hyde	57.80	42.20
Wayne	57.79	42.15
Tyrrell	58.62	41.38
Bladen	58.83	40.95
Wilson	59.56	40.43
Camden	61.29	38.71
Pasquotank	61.81	38.00

TABLE II (CONTINUED)

COUNTY	% WHITE	% NEGRO
Beaufort	62.66	37.33
Duplin	63.03	36.96
Brunswick	63.44	36.55
Person	63.77	35.54
Sampson	63.21	35.21
Pamlico	65.42	34.52
Durham	66.72	33.24
Columbus	66.08	33.00
Craven	67.58	32.37
Chatham	67.94	32.04
Currituck	68.04	31.88
Robeson	42.71	31.59
New Hanover	68.64	31.30
Richmond	69.50	30.49
Wake	70.66	29.28
Forsyth	71.64	28.33
Cumberland	72.01	27.52
Moore	73.14	26.80
Lee	73.97	26.01
Harnett	73.75	25.41
Mecklenburg	74.64	25.33

III. Counties with 10% to 25% Negro Population

COUNTY	% WHITE	% NEGRO
Orange	74.86	24.97
Montgomery	77.07	22.91
Union	77.45	22.53
Cleveland	78.13	21.85
Johnston	78.27	21.72
Rockingham	79.93	20.03
Guilford	80.47	19.50
Alamance	81.49	18.48
Iredell	82.24	17.74
Rowan	82.93	17.03
Onslow	84.11	15.74
Cabarrus	84.70	15.26
Davie	86.04	13.94
Gaston	86.57	13.40

TABLE II (CONTINUED)

COUNTY	% WHITE	% NEGRO
Polk	87.02	12.94
Lincoln	87.32	12.67
Carteret	87.38	12.59
Rutherford	87.74	12.25
Buncombe	87.72	12.24
Stanly	88.60	11.38
Davidson	89.73	10.27

IV. Counties with less than 10% Negro population

COUNTY	% WHITE	% NEGRO
Catawba	90.94	9.05
Stokes	91.02	8.94
Randolph	91.52	8.45
Burke	92.53	7.43
Dare	92.97	7.03
Alexander	92.90	7.02
Caldwell	93.08	6.90
Henderson	93.31	6.68
Wilkes	93.98	5.98
Surry	94.28	5.71
McDowell	94.40	5.59
Yadkin	95.04	4.96
Transylvania	95.05	4.91
Alleghany	96.71	3.29
Haywood	97.79	2.19
Macon	97.77	2.19
Jackson	92.39	2.13
Cherokee	98.27	1.59
Avery	98.47	1.53
Swain	84.37	1.40
Ashe	98.72	1.27
Watauga	98.76	1.23
Yancey	98.87	1.12
Clay	98.88	1.10
Madison	99.06	0.92
Mitchell	99.68	0.32
Graham	96.79	0.15

Source: Population data from the U. S. Bureau of the Census, 1950.

EXHIBIT 4

WHITE AND NEGRO POPULATION BY STATES IN 1950

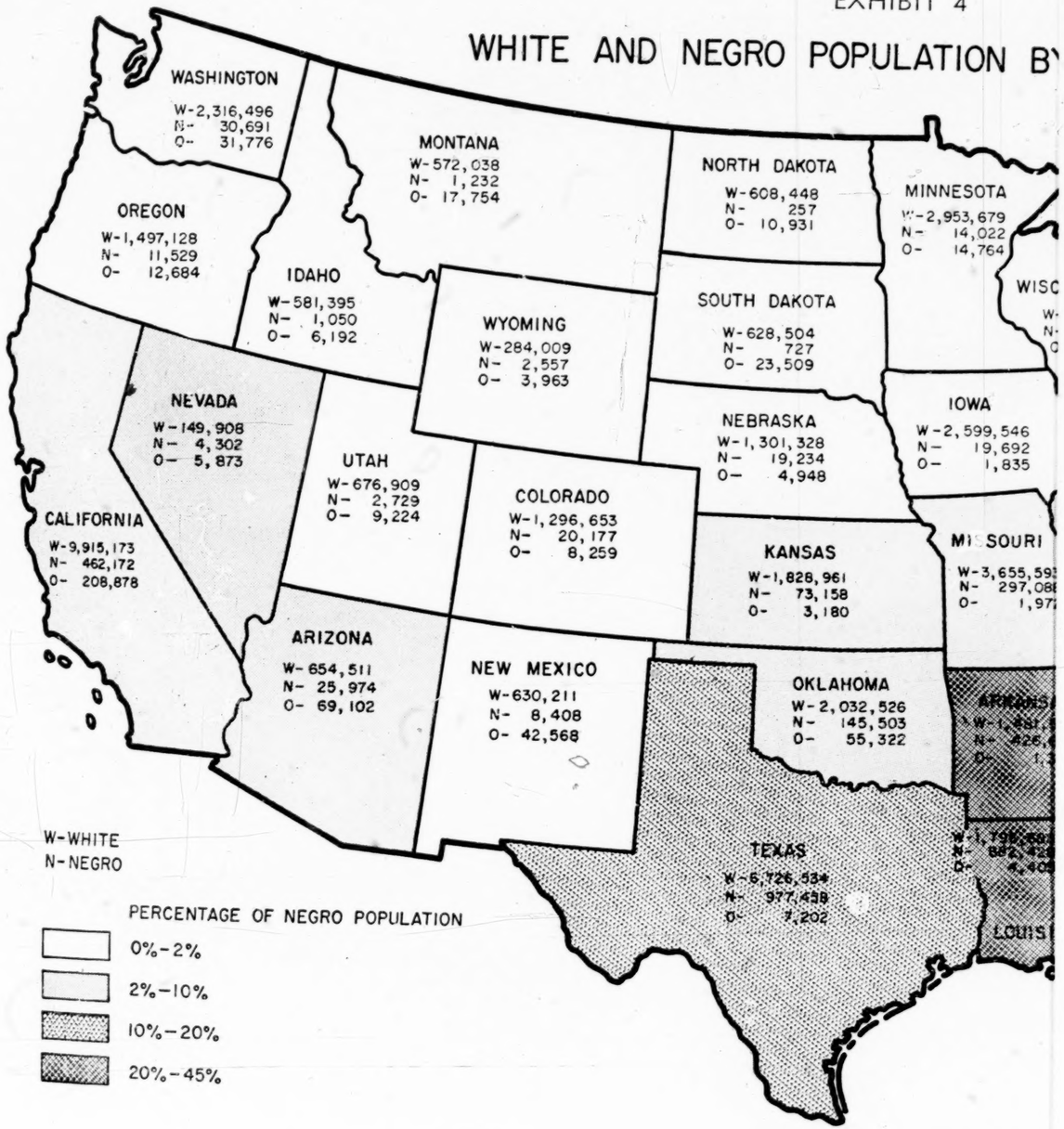


EXHIBIT 4

EGRO POPULATION BY STATES IN 1950

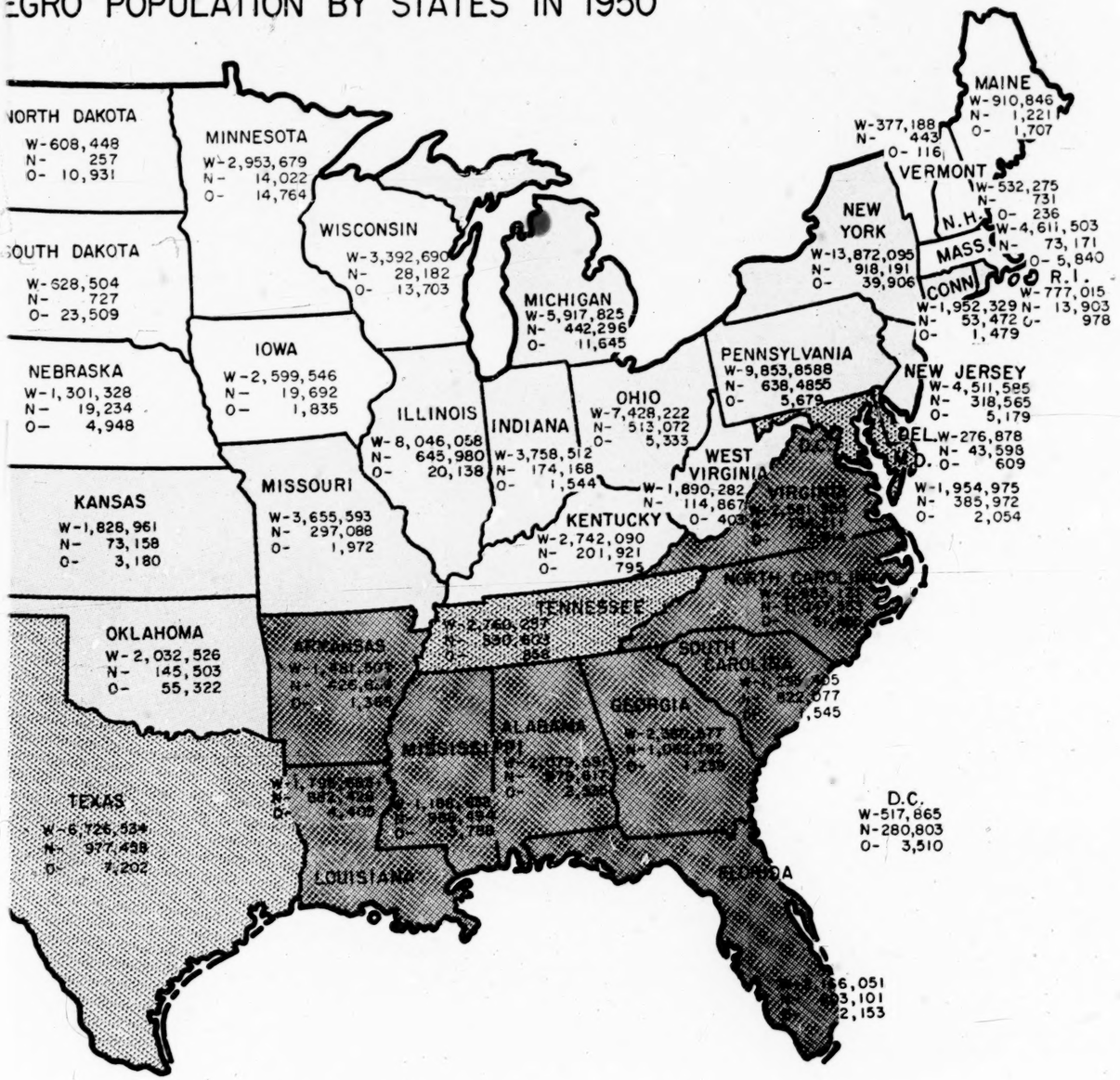


EXHIBIT 5

TABLE III

STATES BY PERCENTAGE OF NEGRO POPULATION, 1950

State	Total Population	% Negro	% White	% Other Races
Mississippi	2,178,914	45.27	54.55	.17
South Carolina	2,117,027	38.83	61.10	.07
District of Columbia	802,178	35.01	64.55	.44
Louisiana	2,683,516	32.88	66.95	.16
Alabama	3,061,743	32.00	67.92	.08
Georgia	3,444,578	30.85	69.11	.04
North Carolina	4,061,929	25.78	73.44	.77
Arkansas	1,909,511	22.34	77.59	.07
Virginia	3,318,680	22.12	77.79	.09
Florida	2,771,305	21.76	78.16	.08
Maryland	2,343,001	16.47	83.44	.09
Tennessee	3,291,718	16.12	83.85	.03
Delaware	318,085	13.71	86.10	.19
Texas	7,711,194	12.68	87.23	.09
Missouri	3,954,653	7.51	92.44	.05
Illinois	8,712,176	7.41	92.35	.23
Michigan	6,371,766	6.94	92.88	.18
Kentucky	2,944,806	6.86	93.12	.02
New Jersey	4,835,329	6.59	93.30	.11
Oklahoma	2,233,351	6.52	91.00	2.48
Ohio	7,946,627	6.45	93.48	.07
New York	14,830,192	6.19	93.54	.27
Pennsylvania	10,498,012	6.08	93.86	.05
West Virginia	2,005,552	5.73	94.25	.02
Indiana	3,934,224	4.43	95.53	.04
California	10,586,223	4.37	93.66	1.97
Kansas	1,905,299	3.84	95.99	.17
Arizona	749,587	3.46	87.32	9.22
Nevada	160,083	2.69	93.64	3.67
Connecticut	2,007,280	2.66	97.26	.07
Rhode Island	791,896	1.76	98.12	.12
Massachusetts	4,690,514	1.56	98.32	.12
Colorado	1,325,089	1.52	97.85	.62
Nebraska	1,325,510	1.45	98.18	.37

TABLE III (CONTINUED)

State	Total Population	% Negro	% White	% Other Races
Washington	2,378,963	1.29	97.37	1.34
New Mexico	681,178	1.23	92.52	6.25
Wyoming	290,529	0.88	97.76	1.36
Wisconsin	3,434,575	0.82	98.78	.40
Oregon	1,521,341	0.76	98.41	.83
Iowa	2,621,073	0.75	99.18	.07
Minnesota	2,982,483	0.47	99.03	.50
Utah	688,862	0.40	98.26	1.34
Montana	591,024	0.21	96.79	3.00
Idaho	588,637	0.18	98.77	1.05
New Hampshire	533,242	0.14	99.82	.04
Maine	913,774	0.13	99.68	.19
Vermont	377,747	0.12	99.85	.03
South Dakota	652,740	0.11	96.29	3.60
North Dakota	619,636	0.04	98.19	1.76

Source: Population data from the U. S. Bureau of the Census, 1950.

EXHIBIT 6

LETTER OF TRANSMITTAL AND QUESTIONNAIRE TO COUNTY AND CITY SUPERINTENDENTS OF SCHOOLS WITH TABULATIONS OF ANSWERS TO QUESTIONS FROM 8 TO 18 INCLUSIVE

STATE OF NORTH CAROLINA

DEPARTMENT OF PUBLIC INSTRUCTION

RALEIGH

October 5, 1954

County and City Superintendents
Greetings:

In the school segregation cases pending for re-argument in the Supreme Court of the United States, beginning December 6, this State has accepted the invitation of the Court to appear amicus curiae and file a brief containing answers suggested by this State to the two questions formulated by the Supreme Court to be considered at that time. The first question is: "Would a decree necessarily follow providing that, within the limits set by normal geographic school districting, Negro children should forthwith be admitted to schools of

their choice?" The second question is: "May this Court, in the exercise of its equity powers, permit an effective gradual adjustment to be brought about from existing segregated systems to a system not based on color distinctions?"

We enclose three copies of a questionnaire which we are sending to county and city superintendents throughout the State as to what may happen at the time steps are taken to compel integration in the public schools, which is necessarily a matter of opinion. We would like to have your opinion, based upon your own knowledge and observations and such information as you have been able to obtain in conference with school and other officials and others in your administrative unit, in answer to the questions contained in this questionnaire, to assist us in presenting our brief and argument in the Supreme Court.

It is important that nothing be done to intensify feelings on this subject. For that reason, we request that you do not discuss this questionnaire with anyone except in a confidential way.

"YES" and "NO" answers are requested to most of the questions in order that we may get results of the questionnaire in composite and tabulative form. Please be sure to furnish these answers if you can with such other and further explanations as you think should be made. Promptness in your reply is extremely important as time is very limited. *Please give this your immediate and preferred attention and mail two copies of the questionnaire with your answers by October 11 to Harry McMullan, Attorney General, Raleigh, North Carolina.*

There will be no disclosure of the names of the various superintendents answering this questionnaire. The results of the tabulation only will be made public by probably being included in the brief to be filed with the Supreme Court.

Yours very truly,
s/ Chas. F. Carroll
Chas. F. Carroll
State Superintendent Public Instruction
Harry McMullan
Attorney General

QUESTIONS FOR SCHOOL SUPERINTENDENTS

1. Name of administrative unit: .....
(county, city)
2. What is the total 1954 enrollment? .....
   a. White enrollment?.....
   b. Indian enrollment?.....
   c. Negro enrollment?.....
3. How many schools are there in your unit?.....
   a. White?.....
   b. Indian?.....
   c. Negro?.....
4. How many teachers and principals in your unit?.....
   a. White?.....
   b. Indian?.....
   c. Negro?.....
5. How many school busses are operated?.....
   a. White?.....
   b. Indian?.....
   c. Negro?.....
6. How many of the schools in your unit, now used exclusively for white children, could accommodate any substantial number of Negro children without displacing any white children?.....
7. How many of the schools in your unit, now used exclusively for Negro children, could accommodate any substantial number of white children without displacing any Negro children?.....
8. In the event the Supreme Court of the United States shall decree in the pending school segregation cases that, within the limits set by normal geographic school districting Negro children should *forthwith* be admitted to schools of their choice in your county or city administrative unit and if Negro children in substantial numbers elect to attend the public schools heretofore exclusively operated for white children, do you have reason to believe that white school children and their parents would peacefully accept this decision and attend such mixed schools? (Answer "Yes" or "No") Yes—7 No—158 D.K.—1

Make such explanation of your answer as you care to make.

9. If your answer to Question No. 8 is "No," do you have reason to believe that the attempt to integrate the public schools in your administrative unit will seriously interfere with and impair your ability to conduct these schools for the year 1955-56?
(Answer "Yes" or "No") Yes—147 No—13 D.K.—1
Make such explanation of your answer as you care to make.

10. Would immediate mixing of the races in the public schools in your administrative unit cause serious complications in the operation of school busses serving your schools?
(Answer "Yes" or "No") Yes—126 No—25 D.K.—1
Make such explanation of your answer as you care to make.

11. In the event of immediate integration of your schools, would you find it practicable to use Negro teachers in mixed classes?
(Answer "Yes" or "No") Yes—3 No—162 D.K.—
Make such explanation of your answer as you care to make.

12. In the event of immediate integration of your public schools, would you have any serious difficulties in securing a sufficient number of properly trained white school teachers to teach in mixed schools?
(Answer "Yes" or "No") Yes—137 No—23 D.K.—4
Make such explanation of your answer as you care to make.

13. In the event of immediate integration, would you have any reason to believe that the mixing of the races in the public schools of your unit would create serious problems of discipline in these schools?
(Answer "Yes" or "No") Yes—150 No—13 D.K.—2
Make such explanation of your answer as you care to make.

14. Would such an integrated program seriously affect the extra-curricular activities in the schools in your administrative unit?

(Answer "Yes" or "No") Yes—148 No—16 D.K.—1
Make such explanation of your answer as you care to make.

15. Would, in your opinion, such immediate integration of the races cause parents in large numbers to withdraw their children from such schools?
(Answer "Yes" or "No") Yes—142 No—20 D.K.—2
Make such explanation of your answer as you care to make.

16. Is there such difference in the average attainments between white and Negro children as to seriously impair instruction in mixed schools?
(Answer "Yes" or "No") Yes—140 No—22 D.K.—3
Make such explanation of your answer as you care to make.

17. Would, in your opinion, white children or their parents elect to attend any school heretofore conducted for Negro children?
(Answer "Yes" or "No") Yes— No—165 D.K.—
Make such explanation of your answer as you care to make.

18. In the event that the Supreme Court should decree that there should be a *gradual* adjustment brought about from the existing segregated system of public schools to a system not based on color distinction, and provided that sufficient length of time were allowed for such gradual adjustment, would the schools of your unit be better able to cope with the problems presented by such a decision?
(Answer "Yes" or "No") Yes—151 No—9 D.K.—5
Make such explanation of your answer as you care to make.

Name and Position of person answering this questionnaire

....

Name Position

EXHIBIT 7

A

The quotations below are comments made by county and city superintendents of schools in explanation of their answer "No" to question number 8 of the questionnaire, which reads as follows:

> "In the event the Supreme Court of the United States shall decree in the pending school segregation cases that, within the limits set by normal geographic school districting, Negro children should *forthwith* be admitted to schools of their choice in your county or city administrative unit, and if Negro children in substantial numbers elect to attend the public schools heretofore exclusively operated for white children, do you have reason to believe that white school children and their parents would peacefully accept this decision and attend such mixed schools?"

The W, N, or I followed by numerals indicate the white, Negro, or Indian school enrollment of the county and city schools of the superintendent answering the questionnaire.

W(4427) N(26)
"I believe that the *majority* would accept the decision reluctantly, but a very substantial minority would fight such a decision to the limit."

W(6724) N(1827)
"A large portion of the people would probably tolerate mixing of children but there would be strong protests, much unhappiness, and many disturbing incidents. A small portion of the people would not accept the decision at all unless force were used."

W(3281) N(811)
"If a large number of Negro children should elect to attend any one white school here, the white people would rebel. We have one situation here where Negroes, because of transporttation, would go in large numbers to a white school."

W(1051) N(441)
"Integration would not be unanimously accepted. Should the county take the Negroes from our attendance area, the unit would be seriously affected unless other children were assigned to this area."

W(2301) N(1702)
"There would be riots, boycotts, and other serious disturbances. It will take a minimum of 25 years to bring about desegregation."

W(2262) N(1835)
"Individual members (all of them) on our School Board say that it will not work here."

W(2432) N(1661)
"The health and moral standards and intellectual abilities are inferior in our Negro children to those of the white children."

W(3534) N(646)
"Our people, in my opinion, would rebel against any immediate plan of integration. Those inclined to accept the mandate of the Supreme Court would be overwhelmed by the others."

W(1710) N(1208)
"If children attend the schools nearest to where they live there will be a minimum of trouble."

W(2256) N(1506)
"Violence will be inevitable and swift."

W(1523) N(1455)
"Parents have expressed their opinion very freely on this subject, and very few are willing to send their children to non-segregated schools."

W(3375) N(2733)
"All schools are accommodating from 25 to 50 per cent more

students than their reasonable capacity; therefore, no room for additions."

W(1795) N(194)
"The change factor here, if nothing more, would be sufficient to prohibit *peaceful acceptance*. I do not mean to say that there would be acceptance otherwise."

W(3256) N(1455)
"Children and parents would not peacefully accept this decision and attend mixed schools."

W(13,032) N(3557)
"From all that I have heard in this county, practically nobody is of the opinion that the Supreme Court's decision can be put into effect at this time."

W(17,926) N(7984)
"Judging by the telephone calls and the conversations provoked, I expect some very unhappy developments."

W(1878) N(0)
"I believe a majority would comply reluctantly, not peacefully, however."

W(8578) N(3442)
"My only reason for answering No is based on the number and frequency of questions asked by white parents about the Supreme Court decision."

W(2117) N(1172)
"In my opinion any considerable mixing of the races in the public schools here would bring complete chaos to the educational program in the community."

W(2398) N(875)
"Judging by what is happening elsewhere."

W(2812) N(1868)
"Precedent: Threatened action of patrons of one of our

schools few years ago when one child of reputed and alleged mixed blood sought entrance."

W(2603) N(7753)
"I do not believe that children and parents in this area, which is so heavily populated by Negroes, would accept peacefully a decision that they must attend mixed schools. Neither race is prepared or willing to accept the decision."

W(1006) N(1127) I(1100)
"This question should be expanded to include Negroes and Indians and by the very nature of the parents and children they absolutely would refuse to accept the idea of mixed schools. Our problem is tri in nature, or even actually quadrangular because we have whites, Negroes, Indians and a fourth group that neither race will claim, and the very instinctive nature of the people will make this possible task prohibitive."

W(5120) N(1683)
"Definitely No.—Our white patrons would strongly protest entrance of Negro children into the white schools. Many of them would keep their children out of school. A few would allow their children to attend with reluctance."

W(3295) N(1900)
"Many of our parents have indicated that they are seeking to get the compulsory school attendance law repealed in the next session of the General Assembly to enable them to teach or have their children taught at home. One and two teacher private schools will appear throughout our communities. If force is attempted to integrate rapidly, violence will occur in my opinion."

W(6253) N(50)
"There will be considerable resentment."

W(1132) N(118)
"Many people, because of tradition and prejudice, will not

peacefully submit to mixed schools."

W(3901) N(777)
"Rural white and textile whites will not easily mix with Negroes."

W(2795) N(1111)
"I believe that this change would be too drastic to be accepted without serious dissatisfaction and without challenge to constituted authority."

W(6487) N(2276)
"We have only one white school with any space left. There is a much more modern Negro school one block from it."

W(696) N(157)
"We have many people who would accept integration, but we have many who would violently oppose it. This latter group would be composed almost wholly of people who could not send students to private schools."

W(3228) N(2515)
"Recent experiences in border states, where there is but a sprinkling of Negro students, indicate the strife that will accompany integration in the South. Problems that have arisen in the border states would doubtless be greatly multiplied in the South."

W(1408) N(2212) I(230)
"Almost all white children would stay at home. Most of the Negro children would do likewise. I have heard Negro parents say they would not allow their children to attend mixed schools as trouble would arise."

W(3494) N(4163)
"An example of the attitude of the people occurred last winter in the School District. I am not proud of it, but it did happen. The colored high school at ..... had a good glee club, and the colored principal asked the white principal about

bringing them over to the white school to sing at the chapel program. The invitation was extended to the colored school and the white principal made an announcement to the children about the program. The children thought nothing about it, but the parents descended on the principal and school board almost in mob violence; so the invitation had to be retracted. This occurrence opened my eyes, and I am just giving you this as an example of what did occur. I think it would be much worse should integration be attempted."

W(552) N(371)
"I have not heard any parent express a willingness to send their children to school where the Negroes are attending."

W(1755) N(1030)
"No one has expressed himself in favor of integration, but the general consensus is against integration. Some high school children have been sent to private schools this year."

W(2460) N(2597)
"I do not know whether you would call it prejudice, but under present conditions the white people will not submit peacefully to this change."

W(3270) N(409)
"Answer based on belief that some of our people would object strongly enough to create a difficult problem."

W(3919) N(2223)
"Practically all of our people feel that such a decision would not be accepted peacefully."

W(9127) N(257)
"Some of the parents might accept it, but others would not under any circumstances, law or no law. Some of these mountain people have definite opinions. Even some of the best informed people have expressed a very bitter attitude."

W(3885) N(74)
"My opinion is that although there might not be any violence

there would be considerable disturbance which would result in a very unhappy and unhealthy situation, especially for the Negro children."

W(9783) N(2305)
"During the month of August we had telephone calls from parents protesting the mixing. People thought the order was effective for the current year."

W(4224) N(66)
"Probably a portion of the parents and children in the urban areas would accept the Negroes, but I doubt that those in the rural areas would."

W(2774) N(3036)
"Expressions already made indicate there would be intense feelings and disturbances."

W(1826) N(1190)
"Our adults would not peacefully accept the decision because: 1. They feel that the Negroes are as well housed as the white children. 2. They think that the Negro children are insanitary and unhygienic. 3. They think that such a social disturbance should not have been thrust upon them so suddenly. 4. They consider the decision an infringement of local and state rights."

W(2905) N(798)
"I think there would be ranging from some to quite considerable oral protests and complaints. If properly presented by school authorities I do not believe there would be any physical violence. Some, but not a considerable number of white children be held out, withdrawn or strike. This I believe would be temporary."

W(2297) N(397)
"This problem would perhaps not be quite so serious in ..... as in some other places, due to the fact that our Negro population is small and concentrated entirely in one district."

W(1937) N(928)
"Neither parents nor students are ready or willing to have mixed schools."

W(1139) N(750)
"I base my answer upon comments and statements I have heard white people make."

W(7416) N(148)
"In view of the small number of Negro children in this county resistance might be less violent than in other counties."

W(4165) N(3107)
"The attitude of the majority of the people is one of watchful waiting. Insofar as I can tell there is no desire on the part of the great majority of the Negro pupils and parents to have the schools integrated. There is a determination quiet at present on the part of a big majority of the white people to maintain separate schools regardless of the cost."

W(1130) N(811)
"I am of the opinion that parents of white children will do some drastic before they will allow their children to be immediately integrated with Negro children."

W(2577) N(148)
"Only one white elementary school in my unit would ever be involved. Some of the parents and some of the children would resist such a move just as they have in Washington, D. C. Ohio; Maryland; and other places where it has been tried."

W(4068) N(27)
"Some parents would accept the decision peacefully, perhaps the majority. A few would organize resistance and would take their children out of school. Many parents would want to send the children to schools in the county that would be free of Negroes."

W(9983) N(4822)
"The spirit of harmony, developed since the days of Aycock

was rudely disrupted by a racketeer group that started an 'equalization' suit 4 years ago. They found the schools so nearly equal in facilities that an advisor stated 'you can lose this suit.' It was withdrawn from Court but not before this group had succeeded in arousing racial bitterness and distrust. In a speech to county officials this group boasted that 'regardless of how equal we find facilities in your county —you haven't a chance to win.' They boasted that the Court was with them all down the line. Confidence in Federal justice was severely shaken."

W(1778) N(619)
"In my opinion, this would result in an armed riot with possible blood shed on both sides."

W(3250) N(1288)
"It was rumored that on September 13, 1954, Negro children would go to the ..... School for enrollment. White people from all over .... County were at or near the school on that date. Patrolmen, the sheriff, and policemen were present. No Negro children appeared and nothing happened but the feeling was running high for three days. The news had spread to all parts of the county and many were ready to come to the place of the scene if needed. I am sure that violence would have occurred if any Negro children had shown up for entrance. Many parents kept their children at home for these three days for fear of a riot. At our request, we had no publicity in the papers about this."

W(1835) N( ) I(393)
"Our people have provided equal schools for both colored and white and they feel that it is best for the white and colored children to go to their own schools."

W(3388) N(329)
"We have six white schools in ..... County. Two of these schools, ... and ..... school districts have no Negro children. Negroes are not allowed to move into these two communities. Our ..... school would have 55 Negro chil-

dren, and there is an unwritten law in the ..... school district that does not permit the sun to set on a Negro in that community. Our ..... school would have 75 Negro children and the entire community of one thousand whites are strongly opposed. Our ..... school would have 30 Negro children, strongly opposed by the whites. The rest of our 329 Negro children enrolled in ..... County would be enrolled in the ..... school in which our one Negro school is located. That would place a total of 169 in the ..... School. Not a single person in the ..... community has stated they would go along with integration."

W(1831) N(235)
"We believe both races would be highly resentful."

W(1787) N(1575)
"Many citizens tell me that it can never happen here. The disturbances which are occurring in Delaware; Baltimore, Maryland; Washington, D. C.; and other places seem to indicate that integration can be accomplished only by force."

W(3738) N( )
"I believe there will be incidents which could be serious, particularly if complete integration is attempted suddenly."

W(4781) N(715)
"Geographical location of Negro children, with some few exceptions, would make the Negro school the logical one for them to attend."

W(2272) N(2638)
"Great disturbances would occur."

W(1000) N(675)
"I am afraid integration will bring about a great deal of trouble to this community which now has splendid race relations."

W(1270) N(1090)
"My opinion is based upon comments of parents and high school pupils."

W(638) N(721)
"If you think other areas have had a rough time, you don't know anything as to what would happen here."

W(6468) N(4337)
"The situation in Washington, Maryland, and Delaware is only a slight breeze compared to the storm we shall have here. It is my opinion that there will be bloodshed."

W(1571) N(2236)
"Because of recent remarks and definite stands on this question by all white parents and citizens in this community with exception of a few ministers."

W(2694) N(1492)
"Those parents and school students who have talked to me have expressed opposition to having the children of Negro and white parents attend the same school."

W(1821) N(428)
"I believe that it would take time. However, I do not believe we would have any Negroes who would want to change unless outside persons interferred."

W(6314) N(3521) I(250)
"It is my opinion that white children and white parents will not accept school attendance in the same buildings in ..... County."

W(3137) N(2210)
"I believe there will be trouble."

W(7175) N(6916)
"Time for public opinion to adjust itself to integration will be necessary and that will take more than one, or two, or three years."

W(13,996) N(1604)
"Remember the ..... case. In certain sections of the county it will be worse. If the local School Board, the State School Board and the State as a whole couldn't operate buses at ....., how can they keep them going this time?"

W(2125) N(15) I(113)
"Parents have expressed their feelings on this matter and say they will not allow their children to attend public school with the colored people."

W(8112) N(2177)
"All answers have been given after consultation with Board of Education and District School Committeemen."

W(3330) N(2681)
"Our hope is in 'schools of their choice.' We have outlined new boundaries and in each case it will be a ratio of 95 to 5. We suggest the minority attend the school of their choice."

W(2629) N(953)
"The feeling on the part of our school patrons is that excellent facilities have already been provided in the Negro school to take care of their needs. For the most part, our Negro citizens live in the general vicinity of their own school."

W(2342) N(2685)
"It is my considered opinion that the people of ..... County will not peacefully acc[illegible] integrated schools, now or at any time in the foreseeable future."

W(5284) N(All colored children in the county are transported to a consolidated school in the ..... city Unit.)
"The total colored school population in the county is approximately 150. This would range from 1 to 20 pupils to be distributed in 10 white schools each. The percentage of colored children against the whites in any one school would be so

low that it would make a very unfair hardship on the colored child to make the necessary adjustments. The same would apply to transportation problems."

W(2409) N(562)
"The patrons of our schools are very determined that we not have mixed schools."

W(6631) N(313)
"They will not accept it. Some will stop their children. In some cases there might be violence."

W(1926) N(533)
"I believe the parents of children in the lower grades would be prone to accept but not those of children in the upper grades. There are many parents, although not in majority, who would not initially accept this arrangement but might in the future."

W(15,551) N(410)
"I do not believe that the decision of the Supreme Court will be willingly followed by the people in this section."

W(1550) N(107)
"Many of our mountain people are given to taking the law into their own hands and settling their emotional differences violently."

W(8661) N(3624)
"There is extreme feeling about this matter on the part of a militant minority—parents and teachers."

W(675) N(764)
"Even discussion of the possibility brings very strong emotional reaction. There was, and still is, strong opposition to those connected with the building program in which approximately 2/3 of the money was spent on Negro schools. With 'better' Negro buildings available there would be a possibility of violent reaction to Negroes *attempting* to enroll in white schools."

W(2379) N(4469)
"It will take an army to enforce segregation in ..... County at this time. I am afraid that riots and bloodshed will result. You cannot change the customs and traditions of people over night."

W(999) N(1062)
"Integration of the races is not desired by either the whites or the Negroes in this Eastern North Carolina community."

W(5542) N(3469)
"The answer is based on comments made by many patrons."

W(4083) N(2344)
"The people have no idea of accepting a decision of integrating the schools."

W(8331) N(4023)
"Do not feel the public would accept such a change without a strong fight—maybe not then."

B

The quotations below are comments made by county and city superintendents of schools in explanation of their answer "Yes" to question number 8 of the questionnaire, which reads as follows:

> "In the event the Supreme Court of the United States shall decree in the pending school segregation cases that, within the limits set by normal geographic school districting, Negro children should *forthwith* be admitted to schools of their choice in your county or city administrative unit, and if Negro children in substantial numbers elect to attend the public schools heretofore exclusively operated for white children, do you have reason to believe that white school children and their parents would peacefully accept this decision and attend such mixed schools?"

The W, N or I followed by numerals indicate the white,

Negro or Indian school enrollment of the county and city schools of the superintendent answering the questionnaire.

W(2796) N(782)
"In my opinion, about 75% of the people, if they had to, would accept it peacefully, even though it would be very distasteful to them. The others will likely withdraw or complain and fight the action—gradually this will likely give way to submission."

W(3669)
"Our situation is not typical of the state. We have only 8 colored children and they are now being transported to ..... They could be absorbed by the schools at ..... without difficulty, if we can trust what the white children say. The P.T.A. of 200 members, expresses this same opinion."

W(1392) N(604)
"We have relative few Negroes in this area, and the majority of the younger people have no racial prejudices."

W(4112) N(55)
"Majority of Negro children prefer to attend the Negro school."

W(14,452) N(2,475)
"Consultation with a substantial number of Negro patrons indicates that very few, if any, Negro children would elect to attend white schools."

W(11,458) N(4,441)
"This I do not know. The problem is unquestionably an explosive one, but our Polio Hospital School has been integrated since 1948. Our newest and finest Hospital is integrated. Our Social Agency Council is non-segregated. A Negro has been elected Councilman, and another Negro has been appointed a member of the Board of Education."

C

The quotations below are comments made by county and city superintendents of schools in explanation of their answer "No" to question number 9 of the questionnaire, which reads as follows:

> "If your answer to Question No. 8 is 'No,' do you have reason to believe that the attempt to integrate the public schools in your administrative unit will seriously interfere with and impair your ability to conduct these schools for the year 1955-56?"

The W, N, or I followed by numerals indicate the white, Negro, or Indian school enrollment of the county and city schools of the superintendent answering the questionnaire.

W(2577) N(148)
"As stated above, only one of five elementary schools would ever be affected in any way. At some future date, some of the Negro pupils may ask to come to the white school for certain vocational courses. I do not believe this will happen soon."

W(4068) N(27)
"All the Negro children of the county live in ....., except two of school age. These two would probably want to attend school here. Only one school in our county would have Negro children in it."

W(1679)
"No Negroes in ..... County."

W(638) N(721)
"I think we can handle our local situation with support at *state level.*"

W(2125) N(15) I(113)
"We have only 22 colored students—8 high school and 14 elementary. Elementary children would attend their own

school because it is located in the center of the colored district. The colored high school pupils would not care to attend our white high school. They are transported to ..... County to a colored high school there."

W(2629) N(953)
"I have little reason to believe that our Negro patrons desire admission into the white schools. It is further my belief that unless outside influence and pressure is brought to bear upon our Negro citizens, little trouble need be anticipated."

W(15,551) N(410)
"We are transporting high school children from ..... County to ..... We have two elementary schools that are as well equipped as the white."

W(4427) N(26)
"The small number of Negro children in the county tends to minimize the scope of the problem. Only one school would be materially affected. If Question 9 is made to apply to that one school only, the answer would be 'yes'."

W(1051) N(441)
"From an administrative standpoint of students, teachers, and principals, no; parents could seriously interfere with our ability to conduct the schools for 1955-56."

W(8578) N(3442)
"Possibly No, if careful study is made in redistricting."

D

The quotations below are comments made by county and city superintendents of schools in explanation of their answer "Yes" to question number 9 of the questionnaire, which reads as follows:

> "If you answer to Question No. 8 is 'No,' do you have reason to believe that the attempt to integrate the public

schools in your administrative unit will seriously interfere with and impair your ability to conduct these schools for the year 1955-56?"

The W, N, or I followed by numerals indicate the white, Negro, or Indian school enrollment of the county and city schools of the superintendent answering the questionnaire.

W(6724) N(1827)
"Since Negro children are as well, if not better, provided for in our schools than the white children, we do not see that it would be an advantage to the Negro children to mix them with whites. The people would say that such a decision would be arbitrary and without justification. The intimate and personal relationships which exist between pupils and teachers and between teachers and parents would be broken down. There would be conflicts in the area of social relationships. By mixing children, we would sacrifice many of the things which make for quality of public education for a mythical goal which is commonly termed 'equality'."

W(3281) N(811)
"Unless the process is a very gradual one, the results will be detrimental to both white and colored."

W(2796) N(782)
"Yes, if integration must take place by then. A gradual program begining with the primary children only might be effected without too much serious interference."

W(2262) N(1835)
"Some of the ..... Club members have told that they simply *will not* allow their children to attend school with Negroes."

W(2432) N(1661)
"Any abrupt change would seriously interfere in operation of our schools."

W(2373) N(4419)
"If many Negro children entered the difference would create a great problem."

W(9619) N(7122)
"We should have more time for our folks to become emotionally ready for integration in the public schools."

W(3534) N(646)
"The most popular candidate for our current race for school trustees is an outspoken, radical opponent of integration, even though he has done very little for our schools in the past and has never been actively affiliated with school progress."

W(1710) N(1208)
"We have no extra classroom space."

W(2256) N(1506)
"Attendance will fall off very sharply as well-to-do parents send children to private schools. Truancy will become a very great problem—other parents will not try hard to make children go to school."

W(1523) N(1455)
"Many white parents have said they would not send their children to integrated schools. Negroes have told us they would keep their children at home rather than risk having them get into trouble with white children or parents. Another problem would be objections to using Negro teachers to teach white pupils. Very few white parents would tolerate this situation. Children in this unit usually offer no discipline problem, but I do not believe the Negro teacher could handle white children."

W(3494) N(4163)
"I think that it would mean that only the Negro children would attend the public schools. From the experience noted above, it is evident that the white people do not intend to go with Negroes. The Negroes will go to the white schools if they are ordered to do so, though I do not think many of them really want to go to the white schools. If integration is ordered, it is my sincere opinion that it will mean the

end of the public school system. I do not think that I would have the nerve or the fortitude to withstand the embarrassments and insults that would be hurled at me. I think that the strain will take its toll of superintendents."

W(552) N(371)
"You can not administer a school system without the support of the majority of the people. In this instance, it appears that all the white people and 98% of the Negroes of this county are opposed to integration."

W(6211) N(1837)
"..... County recently—the last 4 years—has gone 'all out' to bring the building program and equipment up to, or to surpass, that provided for the white race. The County now has only 3 Negro Schools:
1. ..... with 24 elem. teachers and 11 H.S. teachers
2. .....with 12 elem. teachers
3. ..... with 10 elem. teachers
Approximately $515,000 has been put in these buildings with equipment in the last 2 years. The white race will feel that the Negro race has as good as they have, and that the Negro race should be satisfied with their own schools—that both races would thus be better off with separate schools."

W(1755) N(1030)
"Some petitions outside of school circles have been circulated against integration. It is not general knowledge but one such meeting (against integration) has been held."

W(2460) N(2597)
"I just would not know how to suggest the mixing of the races in this county with any peace."

W(3665) N(22)
"Considering the fact that we have only a small number of Negro students, I find considerable feeling against integration."

W(9127) N(257)
"Having only a small number makes the problem even more difficult. It would not be safe for the minority group. As we are situated, there would not be over fifty colored children in any one school. These in school with several hundred white children would be in danger for a long time to come. We have already had evidence of this by children on buses passing each other clashing. It would be bad for even the colored children."

W(1987) N(1303)
"The situation resulting would be disastrous."

W(9783) N(2305)
"The pattern set by schools in the states north of our state will likely to be followed in North Carolina."

W(2774) N(3036)
"In order to conduct schools properly any administration would need a large percentage of cooperation from parents and pupils. We would not have this!"

W(2297) N(397)
"At the present time every classroom is filled and any integration would simply mean the swapping of pupils as between the races."

W(1937) N(928)
"Absenteeism, strikes and riots would be the order of the day."

W(3273) N(875)
"All my energies will be taken up keeping the peace."

W(2603) N(7753)
"It is my opinion that an attempt to integrate the public schools in this administrative unit would prevent the operation of schools in the year 1955-56. There would be such wide-

spread disorder, and perhaps even violence, as to cause operation of schools to be impossible."

W(4548) N(916)
"Definitely—*all* schools in our units are filled to capacity or overflowing. Any transfer of pupils would seriously affect those schools having increases. For example, our schools in the eastern part of our unit have no Negro population. Parents now living in our more thickly populated centers have said they would move to the eastern section. This would create a demand on the limited facilities of those small schools that we could not care for."

W(2812) N(1868)
"Yes—emphatically."

W(1006) N(1127) I(1100)
"I believe this answer to be totally unbiased, that neither myself nor any living human being can conduct our schools on an integrated or partially on an integrated basis for the school year 1955-56 and I believe if it is a decision of the Supreme Court that this be commenced within the foreseeable future, our only alternative would be to close the doors of every school. The racial lines are drawn by the very inherent nature of our people and certainly these barriers cannot be removed, regardless of the efforts that may be exerted by the Supreme Court, local school board or local school people."

W(5120) N(1683)
"It would probably result in reduced appropriations on the local level. It might slow down our building program. It would reduce attendance. It would cause general confusion. There might be a reign of terror. Such an attempt would be loaded with the explosive ingredients of the atom."

W(3295) N(1900)
"In the school districts where the Negro pupils exceed the white pupils in number, the cultural, moral, and general

educational achievement of the Negro pupils is less than that of the white pupils and less than that of Negro pupils in districts where they constitute a small percentage of the total pupil population. In my opinion the white parents in those districts where Negro children are more numerous than white children will not send their children to integrated schools next year. Attempts to use force will, in my opinion, create violence. Some program to provide gradual integration spread out over a period of many years seems essential to maintain a semblance of efficiency in public schools."

W(1132) N(118)
"Time spent in the solution of problems of integration, the loss of morale, and the loss of a high degree of the public support of schools, would certainly interfere with the successful operation of the schools."

W(6253) N(50)
"People here have not been able to convince themselves that this should be done."

W(1878)
"But I do not believe it would create an impossible situation."

W(755) N(522)
"I believe that an attempt to integrate the public schools in this year for the 1955-56 year would result in such an emotional reaction that the normal conduct of the schools would be practically impossible."

W(17,926) N(7,984)
"Too often people are saying 'See what is happening in Delaware, Maryland, Ohio and West Virginia'."

W(13,032) N(3557)
"While I cannot predict with any great degree of certainty as to what will take place, I am positive in my thinking that there will be rebellion, and that it will take years to overcome the conditions that will cause such. If rebellion comes,

and there are serious consequences, it may take years to overcome the results of such consequences."

W(3256) N(1455)
"Many parents have expressed themselves that they will remove their children from school."

W(1795) N(194)
"At present—with the advice of architects, professional School Survey persons and our School Board—together with all available money, we will not have sufficient white classroom space in 1955-56 under our present program."

W(3901) N(777)
"Integration will be difficult at any time. With all white and Negro school buildings now crowded, mixing the races with pupils necessarily thrown together in crowded conditions would seriously increase difficulty of integrating."

W(2795) N(1111)
"The emotional climate of the integrated schools would make it difficult to administer them effectively, in my opinion."

W(6487) N(2276)
"Very few of our parents of white students are ready to accept integration. The citizens living in areas where the average income is low, and where there are Negro residential sections, seem to harbor more resentment on mixing the races than better informed parents in higher economic areas."

W(696) N(157)
"I think attendance would be seriously impaired, that community-school relationships would be completely disrupted and that student discipline might be destroyed."

W(3228) N(2515)
"Schools accomplish results through a co-operative effort with the community in which they are located. Arguments and strife which would doubtless accompany integration would

obviously set our school program back many years and destroy much of what has been accomplished in improved race relations of recent years."

W(1408) N(2212) I(230)
"Not only during the year 1955-56, but all during the foreseeable future. Our people have been most cautious and conservative in their statements. But it needs only an overt act to blow things up. A good illustration of the way our people feel. This week, a prominent citizen made this statement. "Just last week I guaranteed a $93.00 hospital bill for my daughter's cook. For some reason the Welfare Dept. could not help her. I didn't want her to die even though I had never seen her but one time. I didn't mind helping her out, but I'll be damned if my grand children are going to school with her children."

W(7416) N(148)
"The people of this county would not accept integration in 1955-56."

W(4165) N(3107)
"If the situation described in No. 8 should develop it would mean that for every Negro pupil admitted to a now white school that an equal number of white pupils would be forced to attend a now Negro school. This would lead to boycotts, demonstrations or perhaps worse. A militant police program of enforcement would be required for a number of years. Educational opportunities for both races would suffer."

W(1130) N(811)
"I don't believe that an integrated school can be conducted in this unit now, nor for years to come."

W(9983) N(4822)
"(1) Negro schools are organized to take care of their racial needs, e.g. bright, average and low mentality groups are given courses of study quite different in academic levels. Integration would call for a drastic change of this organization

very detrimental to the Negro.
(2) The white schools would either have to lower their standards or fill our primary grades with over-age Negro children. (A chart showing this situation is available.)
(3) At the high school level at least 40% of the Negro students would be dropped according to even the lowest provision of adjusted courses in the white school.
(4) The difference in attitudes, accent, viewpoints, rate of physical growth, mentality, or in other words, Race, makes the experiment one unprecedented in history. Egypt integrated her peasants with about the same percentage of Negro that we have. They, however, did this over a period of many centuries, producing the modern fellaheen."

W(1778) N(619)
"I do not believe that we could operate the schools at all with integrated classes during the 1955-1956 school year."

W(1571) N(2236)
"With the large number of Negro children in this county and the attitude of the vast majority of white citizens against integrated schools, no one will be able to conduct our schools satisfactorily, if at all. There would be 'violent reaction' to any move to integrate ..... County Schools."

W(6468) N(4337)
"It will be impossible to have such schools or to administer such schools. The Army would experience trouble in conducting such schools."

W(1270) N(1090)
"Most of the people I have talked with do not believe the schools should be mixed."

W(1000) N(675)
"The impact will be too great. No decision can change the customs and feelings of people which have been a part of them for years in so short a time."

W(2272) N(2638)
"Public relations and the resistance of white patrons, pupils and teachers to integration would make administration an almost impossible task."

W(3738) N( )
"This answer is given with the understanding that schools would be seriously affected and my ability to administer them likewise affected if complete integration is to be attempted *in toto* and without such being done gradually."

W(1787) N(1575)
"In some schools there would not be classroom space if segregation is abolished and Negro children admitted to schools previously operated for white children only. If the Negro high school students now attending the ..... county ..... School at ..... are integrated at ....., there would not be classrooms for them."

W(1831) N(235)
"Both races will object with vigor. Many children will quit school. Many others will be in and out so much that it will be most difficult to conduct a satisfactory program."

W(3388) N(329)
"The people in ..... County will not accept an integrated public school system. It just won't work here. The ratio percentage of Negro children to white children is only about 8%, but this fact hasn't meant anything to the average citizen when I attempted to explain that our Negro school child problem was quite simple as compared with other areas in North Carolina, and more especially the deep South."

W(3250) N(1288)
"Our school busses and our classrooms are crowded. For the school year 1955-1956, we would be faced with an impossibility."

W(999) N(1062)
"The trouble that is now being experienced in Ohio, West

Virginia, Delaware and the District of Columbia is indicative of the feeling that exists over this matter, and the feeling in Eastern North Carolina where we have almost equal numbers of whites and Negroes is even more intense than it is in these border and Northern states."

W(2379) N(4469)
"It will take an army to enforce segregation in ..... County at this time. I am afraid that riots and bloodshed will result. You cannot change the customs and traditions of people over night."

W(675) N(764)
"Even discussion of the possibility brings very strong emotional reaction. There was, and still is, strong opposition to those connected with the building program in which approximately 2/3 of the money was spent on Negro schools. With 'better' Negro buildings available there would be a possibility of violent reaction to Negroes *attempting* to enroll in white schools."

W(8661) N(3624)
"Many teachers would quit (white). Attendance would be poor (white and Negro). Antagonistic feelings and attitudes would seriously impair the program."

W(1550) N(107)
"I personally believe that should the action be state-wide, we would not have too much trouble."

W(1821) N(428)
"The race relations are excellent now. No problem as it now stands."

W(6314) N(3521) I(250)
"I believe that if integration is perfected in our public schools in ..... County that our white children will not attend school in 1955-56. Our parents and children are not ready for integration."

W(3137) N(2210)
"I do not believe *either* race is ready for integration."

W(7175) N(6916)
"Two problems that cannot be solved so quickly:

1. White population cannot be brought to accept it by 1955-56.
2. Building facilities and organization sufficient to handle situation will not be ready in 1955-56."

W(9335) N(1587)
"People are quite well pleased with our schools as they are, both white and Negro. I'm sure it would create a great deal of turmoil if integration of the races were attempted."

W(3330) N(2681)
"We have many people from all areas who are not willing to accept integration yet. If it has to come, it seems that a gradual introduction would be best."

W(5284) N(All colored children in the county are transported to a consolidated school in the ..... City Unit.)
"The sentiment at the present among our colored population in the various communities of the county is that they prefer to continue under the present set-up."

W(2409) N(562)
"Our Negro population is very happy with the present set-up as their school facilities are as good as the white children have. We would have no trouble if outsiders will leave the Negroes alone."

W(6631) N(313)
"I think it will seriously disorganize the schools. Neither race in this county wants to go to the same schools. They are satisfied as it is now. Ninety-five per cent of the colored would vote to keep it as it is now."

W(1926) N(533)

"1. Do not believe enough white teachers can be employed to fill positions.
2. Do not believe white patrons will send children to school under Negro teachers.
3. Building locations are wrong for an integrated program.
4. Resentment by certain groups to integration."

W(8331) N(4023)

"Public would lose interest in public education. Would not vote bond issues or tax levies for the continued advancement of schools—attendance would be less regular—compulsion would be impossible."

W(4083) N(2344)

"The Negroes want to attend their schools, and we all believe there will be no decision preventing the democratic method of choosing the school they are to attend. If the people are given a choice in choosing their school, there will be no problem in ..... County. The whites will attend theirs, and the Negroes will attend theirs; yet they can be given the information that they have a legal right to integrate."

E

The quotations below are comments made by county and city superintendents of schools in explanation of their answer "No" to question number 10 of the questionnaire which reads as follows:

> "Would immediate mixing of the races in the public schools in your administrative unit cause serious complications in the operation of school busses serving your schools?"

The W, N, or I, followed by numerals indicate the white, Negro, or Indian school enrollment of the county and city schools of the superintendent answering the questionnaire.

W(4068) N(27)

"We only have about twenty-seven (27) Negro grade school

and fifteen (15) high school children and most of them would be in walking distance of the school."

W(2795) N(1111)
"We do not operate school busses at present. I would think that bus transportation problems would be even more difficult to deal with than classroom or building problems."

W(6487) N(2276)
"Negro high school students from this and other counties are transported to our Negro High School."

W(11,458) N(4441)
"Bus loads would be affected little, if at all."

W(3330) N(2681)
"We have only two, from a completely white housing area."

W(1926) N(533)
"Negro buses bring in mostly county students which would then go to county schools."

W(2125) N(15) I(113)
"Only one colored bus and it carries the high school students to ..... County colored high school."

W(2629) N(953)
"The only buses operating in our schools are those transporting high school students residing in the rural areas into our unit. The ..... County Schools do not operate a secondary school for Negroes."

W(1550) N(107)
"In our case all Negroes could be transported on one bus. They are segregated in two small communities not too far apart."

W(2297) N(397)
"No white pupils are transported."

W(3885) N(74)
"Provided buses continue to operate as now. At the present time we are operating only one bus for the Negroes and this bus could continue for the same purpose."

W(3270) N(409)
"Our buses cover a small geographic area for white children and a much larger area for Negro children."

W(6724) N(1827)
"Negro children do not live in areas now being served by busses for white children and white children do not live in areas now being served by busses for Negro children."

W(6253) N(50)
"Not enough would be affected."

F

The quotations below are comments made by county and city superintendents of schools in explanation of their answer "Yes" to question number 10 of the questionnaire, which reads as follows:

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The W, N, or I followed by numerals indicate the white, Negro, or Indian school enrollment of the county and city schools of the superintendent answering the questionnaire.

W(1523) N(1455)
"Our most serious problem would be the operation of non-segregated busses. Teachers would not be present to supervise and it is the opinion of our Board of Education that school transportation would have to be abolished. If so, this would abolish our school system."

W(2256) N(1506)
"At present our busses are being driven by 16, 17, and 18 year old children. They are incapable of driving safely when racial fights and arguments are going on behind them—and this will happen."

W(2432) N(1661)
"Routing and serving overcrowded schools for both races would complicate our present districting."

W(3275) N(2733)
"Both white and Negro children, as well as their parents, prefer that they be permitted to go to their own schools."

W(1051) N(441)
"This seems to be the area from which you hear so much complaint."

W(2398) N(875)
"Only Negroes are brought at present in County buses. Could this segregated bus be continued?"

W(3898) N(2681) I(5746)
"We have three races in our county. There is very little apparent disposition or sentiment in either of the races to mix the school population on busses or in schools."

W(1878)
"This would be an impossible situation unless adult bus drivers were employed to maintain discipline."

W(13,032) N(3557)
"There may be greater complications on account of necessity of children being packed close together. Practically all of our busses are loaded to capacity, including standing room."

W(3256) N(1455)
"This would create a greater problem than in the school room, because on the bus there is no supervision."

W(1795) N(194)
"Already operating on 'Overloads,' to white schools."

W(4548) N(916)
"Busses operating to the two centers of population of the unit travel the same routes. All busses, negro and white, are loaded to seating capacity. A mixing of the races on these busses would result in serious trouble."

W(1006) N(1127) I(1100)
"In our situation we have a total of 17 busses. Nine are hauling white children; eight are hauling Negro children, and it is my belief that the reaction of mixing the races on the busses would result in neither of the busses arriving at their destination, and I further believe that these busses would be destroyed by a combination of student and people reaction."

W(5120) N(1683)
"Due to the close bodily contact of children in school, white children would refuse to ride the same busses with Negro children. If ever forced to enter the same busses, the situation would become explosive."

W(3295) N(1900)
"The operation of busses on an integrated basis will constitute one of the greatest problems of integration. At the school the principal and teachers may be able to maintain order. The student drivers whom we employ to drive busses will not be able to cope with the problem that will arise on the routes."

W(1132) N(118)
"Personal contact on over-crowded busses would cause more problems than would result in classrooms under teacher supervision."

W(3494) N(4163)
"I think that this perhaps presents the biggest problem. If I were a parent, either white or colored, I do not think I

would let a child of mine attempt to ride a school bus unless there were an officer of the law in charge of the bus."

W(552) N(371)
"White and Negro children will not mix peacefully in this county, any more than oil and water."

W(6211) N(1837)
"Principals say that the most serious problem would be that of the busses. They say now that 90 per cent of disciplinary problems arise from bus transportation."

W(1755) N(1030)
"Parents and pupil comments."

W(2460) N(2597)
"The most of the trouble we have on busses is where one or two families are not on the best of terms. You are going to raise this to the "N" parents, when you add negroes."

W(9127) N(257)
"Most all busses would have a few colored children. The minority would be in constant trouble."

W(3885) N(74)
"At the present time we are operating only one bus for the Negroes and this bus could continue for the same purpose."

W(9782) N(2305)
"Comments from parents indicate that we may expect trouble"

W(4224) N(66)
"It would not so far as the physical or numbers of pupils per bus is concerned, but it would be a very serious social problem."

W(2774) N(3036)
"Lack of adult supervision on buses would make the situation

there more unacceptable than in classrooms. We have heard many expressions of this nature."

W(1826) N(1190)
"It seems that buses would have to transport white, Negro and Indian children in the same bus. With buses crowded, this would invite trouble from children and adults. It would be almost impossible to secure bus drivers if 2 or 3 races were allowed to ride same bus. Race prejudices would be manifest in violence."

W(1937) N(928)
"Whites would stay home rather than ride with Negroes."

W(1270) N(1090)
"My answer here is based on comments I have heard from parents and pupils."

W(8661) N(3624)
"In many instances Negro children would not be permitted to ride; if so, white children would not. Doubt if drivers could be secured."

W(675) N(764)
"Adequate supervision could not be provided. I could not take responsibility for what would happen. The situation is too explosive."

W(999) N(1062)
"It would necessitate the riding of Negro tenant children and white landlord children on the same bus and our people are not ready for this radical change without causing serious complications."

W(3250) N(1288)
"All is well at present. All busses are loaded to capacity. Why cause confusion by changing from the best to the worst?"

W(3388) N(329)
"Since we have only one Negro school in ..... County, and

that is located at ..... in the exact center of the county, and to this school we haul all Negro children out of every school district in the county, with the exception of two, there would be a few colored children on all of the 44 busses in this county with the exception of seven. It just won't work."

W(1831) N(235)
"Separate buses are presently crowded, and require more coverage of area than could be successfully done with an integrated program."

W(1787) N(1575)
"A superintendent in New York State once told me that many fights occurred between Negro and white pupils there while riding the school buses. There will be many more here for a long time."

W(1778) N(619)
"School busses are of necessity under limited supervision because teachers seldom ride the busses. We could not successfully transport both races together."

W(1130) N(811)
"This is where our most serious complications would begin."

W(1408) N(2212) I(230)
"The white people will come nearer letting the children sit together in school than they will ride on the same busses."

W(696) N(157)
"Many families will not, under any circumstances, put white children on a bus where the races are mixed."

W(9983) N(4822)
"The friction, flare of tempers, and family feuds are bad enough on the crowded busses. If the racial problem were added, racial hatred would develop faster than for any other one phase of the amalgamation process decreed by the court. This county has Negroes on every bus line."

W(4910) N(2638)
"I fear serious trouble would result. Strikes, fights, and other mass resistance, I fear would occur."

W(1000) N(675)
"More trouble will occur on busses than anywhere as less adequate supervision is available."

W(6468) N(4337)
"It would mean the end of free transportation to school. White families would boycott school busses. In my opinion, the Legislature would abolish free school bus service making it necessary for each family to provide transportation. The poor of neither race would get to school."

W(1571) N(2236)
"White parents would seriously object to mixing pupils on school busses."

W(4781) N(715)
"City busses transport white children. Public school bus transports Negro children. Present city busses would not adequately serve Negro children."

W(638) N(721)
"White and colored children just aren't going to ride together—that is, not without serious trouble."

W(1821) N(428)
"Would complicate the routing, timing, and general transportation problems."

W(6314) N(3521) I(250)
"I am sure that mixing of the races in our unit would complicate school bus operations to the extent that it would be impossible."

W(3137) N(2210)
"I believe the white children would refuse to ride, and

believe it would take force to make some of them agree to ride."

W(7175) N(6916)
"There would certainly be trouble between the races at this time."

W(9335) N(1587)
"We could serve all the children, but I think complications would develop in trying to transport both races on the same bus."

W(2342) N(2685)
"It is my opinion that student drivers can no longer be used if it becomes necessary to eliminate our dual transportation system."

W(15,551) N(410)
"With present buses loaded, unable to increase bus loads."

W(8331) N(4023)
"Would make an almost unbearable situation."

W(4083) N(2344)
"One of the most serious problems connected with integration."

W(5542) N(3469)
"Considerable re-routing would likely be necessary. White and colored children would likely not get along well on same bus."

G

The quotations below are comments made by county and city superintendents of schools in explanation of their answer "Yes" to question number 11 of the questionnaire, which reads as follows:

"In the event of immediate integration of your schools, would you find it practicable to use Negro teachers in mixed classes?"

The W, N, or I followed by numerals indicate the white, Negro, or Indian school enrollment of the county and city schools of the superintendent answering the questionnaire.

W(1051) N(441)
"The Negro personnel here is above the average in training."

W(2905) N(798)
"I believe it would be practicable to use Negro teachers if Negro children are in the majority."

W(6487) N(2276)
"We have some very fine Negro staff members. If I had children I would feel they were very fortunate to be taught by these superior teachers, but I doubt that many of our parents are ready to accept them as yet."

H

The quotations below are comments made by county and city superintendents of schools in explanation of their answer "No" to question number 11 of the questionnaire which reads as follows:

"In the event of immediate integration of your schools, would you find it practicable to use Negro teachers in mixed classes?"

The W, N, or I followed by numerals indicate the white, Negro, or Indian school enrollment of the county and city schools of the superintendent answering the questionnaire.

W(4427) N(26)
"Even those parents who might accept integration as being inevitable would absolutely defy any attempts to used colored teachers in mixed classes."

W(1490) N(1784)
"Not practical from a standpoint of administration."

W(2301) N(1702)
"This simply cannot be done in our part of the state."

W(6724) N(1827)
"The protests would be more violent with regard to placing white children under a Negro teacher than they would be with regard to mixing white and colored children."

W(3281) N(811)
"Our people will not agree to this. It will take a long time before this could happen here."

W(2256) N(1506)
"The public will not permit it."

W(2432) N(1661)
"The average Negro teacher would be an inferior teacher when placed in a mixed situation."

W(5120) N(1683)
"White parents would not like for their children to be disciplined by Negro teachers. White children would resent Negro teachers. White children under Negro teachers would become objects of ridicule by pupils fortunate enough to have white teachers."

W(3295) N(1900)
"Under the existing machinery set up for electing teachers it is doubtful if any of our committees will elect Negro teachers for mixed classes."

W(1132) N(118)
"Our people would not accept Negro teachers at this time or in the foreseeable future."

W(1392) N(604)
"There is a general public feeling that Negro teachers are

not properly trained for the work."

W(6253) N(50)
"People here will not accept the Colored teacher."

W(8578) N(3442)
"No, unless the classes are predominantly Negro."

W(1795) N(194)
"Immediate integration or otherwise—there will probably be many factors available, other than race or color, for failure to recommend a Negro teacher for a white or mixed school."

W(3256) N(1455)
"The white parents would not allow colored teachers to teach their children."

W(13,032) N(3557)
"Right now I am positive that such would not work in this county, and that there would be no way of enforcing it."

W(2398) N(875)
"It would depend on the school, I think. Negro teachers would be used only in the schools that are now Negro schools."

W(1878)
"Our Board would not employ Negroes to teach mixed classes."

W(17,926) N(7984)
"White parents are not ready to accept Negro teachers."

W(4548) N(916)
"Our white parents will not accept Negro teachers for their children."

W(1006) N(1127) I(1100)
"I think the use of Negro teachers as instructional or administrative personnel would, out of absolute necessity, be

even farther in the future than total integration. The former is at this time impossible and the latter totally impossible."

W(2774) N(3036)
"We answer 'no' to the practicability, because observations made on numerous occasions have been to the effect that Negro teachers would not be acceptable with white parents and pupils—also, that Negro teachers would not be elected in the first place."

W(1826) N(1190)
"The scarcity of white teachers may force this to be done, and it is possible that it may work in classes made up of the primary age."

W(1937) N(928)
"Whites would not stand for it."

W(2297) N(397)
"Our people simply would not accept Negro instructors at the present time."

W(3885) N(74)
"In my opinion any white students would not attend mixed classes taught by Negro teachers."

W(8900) N(272)
"We have only 9 Negro teachers in our unit and I doubt if they would be accepted."

W(3494) N(4163)
"No, but you would have to do it due to shortage of white teachers."

W(6211) N(1837)
"I do not believe that a Negro teacher would be employed to teach white children under present law."

W(1755) N(1030)
"Both parents and teachers have expressed themselves to this effect."

W(2460) N(2597)
"I just believe the white children would make teaching so unpleasant that the teacher would leave the room."

W(3919) N(2223)
"Except where Negro students would be in great preponderance."

W(9127) N(257)
"I never expect this to take place in this county for years and years to come. We would not have any class in which a majority would be colored. The majority will control right or wrong.

W(9783) N(2305)
"Comments from parents have indicated objections to the practice."

W(4224) N(66)
"Our people absolutely will not accept Negro teachers."

W(696) N(157)
"I would not, under any circumstances, recommend a Negro teacher to teach white children in this town in the foreseeable future."

W(9983) N(4822)
"(a) Too many Negro teachers have been indoctrinated in ideas repulsive and antagonistic to the white race. I would not want to be responsible for what would happen if white pupils carried home some of the statements of Negro teachers. (b) Many Negro teachers have obtained high certificates without corresponding ability and knowledge. The ease with which higher degrees have often been obtained is a National disgrace.

(c) Negro teachers have been accustomed to teaching pupils of much lower mental ability and achievement. It would be a great tragedy for the white race to have to fall to their level of experience. It is so much easier to fall than to climb."

W(1139) N(750)
"I would not dare employ a Negro teacher to teach white children in this community."

W(3901) N(777)
"White children would not attend school taught by Negro teachers now; with small and gradual integration, this might be possible—But not now."

W(3228) N(2515)
"White parents and some teachers would not accept it."

W(7416) N(148)
"Negro teachers would, under all circumstances, be unacceptable to white children."

W(4068) N(27)
"We have a surplus of white teachers in our county and only one Negro teacher certified to teach. This teacher holds a "B" certificate."

W(2795) N(1111)
"I believe that there would be difficulty in administering discipline and conducting instruction in most instances."

W(1778) N(619)
"It would not be practical to place Negro teachers in mixed classes. Parents of white children would not send their children to school. Older children would rebel."

W(1130) N(811)
"Whites will refuse to send their children to Negro teachers."

W(4165) N(3107)
"There is no logical reason to believe that the situation here

would be different from that which has existed throughout the years in the non-segregated areas of this nation. The majority race which has controlled and will continue to control employment policies will not permit it."

W(1550) N(107)
"We have several sections of each grade in our school and a Negro teacher in only one or two sections would seriously hamper grade distribution."

W(1270) N(1090)
"We have white parents who will not let their children be taught by Negro teachers."

W(8661) N(91)
"Bad enough to have mixed classes."

W(675) N(764)
"White parents do not want them. I have hesitated about permitting Negro supervisors to visit in white schools because there is some feeling against Negroes going into white schools except as janitors or repairmen."

W(999) N(1062)
"The majority of white patrons would demand white teachers for their children. I believe that most Negro children prefer Negro teachers."

W(3250) N(1288)
"No principal would be able to operate a school under these circumstances because he could not be mentally happy. Whose children would be placed in this classroom? None of our white people will agree to this. Our principals would resign to work in other fields at less salary. Our white children would stay at home."

W(3388) N(329)
"There is no place for a Negro teacher in ..... County white schools. There would not be enough Negro children in any

one grade in any one school to give a majority of Negro children in the classroom that would justify the employment of a Negro teacher. Our Negro agriculture and home economics teachers would not have a job because the three white high schools, ..., ... and ..... all have vocational agriculture and home economics teachers. There would be only a few colored children in each of the six departments. There would actually be a saving in school personnel through integration of seven teachers."

W(1831) N(235)
"I do not think Negro teachers would be competent to teach white children. Their basic understanding and concepts are different and their standards are different."

W(1787) N(1575)
"Most white parents and children will object to Negro teachers teaching white children."

W(2272) N(2638)
"We have many well qualified Negro teachers, but using them under these conditions would just make matters worse."

W(1000) N(675)
"They would not be able to maintain discipline. White parents and white children will not accept them as teachers."

W(10,805) N(6468)
"Our schools would follow the pattern of the North. The only difference being we would have even fewer Negro teachers, if any."

W(1571) N(2236)
"White parents would not permit Negro teachers to teach their children."

W(638) N(721)
"We aren't employing any Negro teachers until the last white is used up."

W(1821) N(428)
"Integration would have to be slow."

W(2571) N(1559)
"Except where a large majority of the classes were Negroes."

W(2409) N(562)
"Our white patrons might finally submit to mixed classes, but they will never send their children to school to be taught by Negro teachers."

W(6631) N(313)
"White committeemen would resign before they would elect them. We would have very few colored children in any class."

W(11,458) N(4441)
"I do not believe Negro teachers will be accepted as yet. This conclusion is based upon what has happened in the North and West."

W(3330) N(2681)
"We do not believe that white children will accept Negro teachers yet. The problem of discipline will be bad."

W(1926) N(533)
"White patrons would not send children to school."

W(2125) N(15) I(113)
"Only one colored teacher in the county."

W(6314) N(3521) I(250)
"I do not believe that white parents will allow Negro teachers to teach their children."

W(3137) N(2210)
"The few parents who might agree to integration would oppose Negro teachers teaching their children."

W(7175) N(6915)
"When public opinion accepts integration of pupils it will probably accept some good Negro teachers in mixed classes."

W(9335) N(1587)
"I don't believe white parents would agree to have their children taught by Negro teachers."

W(8331) N(4023)
"This is one choice the public would demand."

W(5542) N(3469)
"Answer based upon comments made by parents."

I

The quotations below are comments made by county and city superintendents of schools in explanation of their answer "No" to question number 12 of the questionnaire which reads as follows:

> "In the event of immediate integration of your public schools, would you have any serious difficulties in securing a sufficient number of properly trained white school teachers to teach in mixed schools?"

The W, N, or I followed by numerals indicate the white, Negro, or Indian school enrollment of the county and city schools of the superintendent answering the questionnaire.

W(3669)
"No; that is, any more than we are already having."

W(14,452) N(2475)
"This is my present opinion. I could be wrong."

W(1051) N(441)
"Most teachers work for a living and because of the satisfaction from a job well done, we think they would continue to teach."

W(6211) N(1837)
"We could get teachers. Camp ..... Marine wives would be available."

W(2774) N(3036)
"Applications from older teachers and former teachers now married in community this past year were much more numerous than open positions. This source would be explored in event of the above."

W(2905) N(798)
"It would be little if any more difficult than now. Unfortunately too many of our teachers teach of necessity for this reason mixed classes will not matter. For those who teach from choice because they like children and have chosen teaching as an avenue for civic service the color of the child will make no difference."

W(4068) N(27)
"Only one school would have Negro children in it. Teachers that objected to teaching them could be used in the other schools."

W(7416) N(148)
"The answer is no because in this unit the number of Negro teachers is not appreciable. It is qualified in that we have difficulty in finding white teachers any way."

W(1550) N(107)
"We have at present only four Negro teachers out of fifty-four."

W(999) N(1062)
"At present we have difficulty in securing enough properly trained white teachers to teach in our all white schools, but a Negro high school principal told me that integration of the races would be another Pearl Harbor. He says that many white teachers would return to the schools rather than see

Negro teachers teach their children. I believe he is right. If so, we could find a supply of white teachers."

W(3388) N(329)
"I have a few white teachers who have expressed to me their willingness to teach a mixed group if absolutely necessary but I have many teachers who now say that they will leave the profession if they have to teach Negro children."

W(1270) N(1090)
"We get an unusual number of applications for teaching in ..... at present. I can't say what the situation would be if the schools were mixed."

J

The quotations below are comments made by county and city superintendents of schools in explanation of their answer "Yes" to question number 12 of the questionnaire, which reads as follows:

> "In the event of immediate integration of your public schools, would you have any serious difficulties in securing a sufficient number of properly trained white school teachers to teach in mixed schools?"

The W, N, or I followed by numerals indicate the white, Negro, or Indian school enrollment of the county and city schools of the superintendent answering the questionnaire.

W(2256) N(1506)
"Negro teachers for white children will not find acceptance in areas with considerable Negro population. The legislatures will be likely to reduce requirements so that more white teachers will become available. Also, as the need becomes acute, salaries will rise, thus bringing many newcomers into the profession. So white teachers will shortly be available."

W(1523) N(1455)
"A number of qualified white persons have indicated they

would come back into the profession, yet we do not have enough of such to replace all Negro teachers."

W(3534) N(646)
"Our local white teachers, of long experience and influence, have expressed a feeling to resign if this should happen."

W(9619) N(7122)
"We could probably secure teachers because the city pays a good supplement. We cannot now secure enough good white teachers to fill our vacancies."

W(2262) N(1835)
"Some of the white teachers have told me they will quit teaching if forced to teach Negroes."

W(2796) N(782)
"Many of the white teachers now teaching would stop if they had to teach colored children."

W(3281) N(811)
"My opinion is that many of our white teachers would resign. Since we already have a shortage, this could create a very bad situation."

W(6724) N(1827)
"It is all that we can do to secure qualified white teachers for white children now."

W(1490) N(1784)
"We have serious difficulties as it is."

W(545) N(652)
"White teachers not available."

W(4427) N(26)
"Already a problem, it would be intensified by integration. I have heard teachers remark that if and when integration came they would leave the teaching profession."

W(1795) N(194)
"I have white vacancies *now*, in white schools and no qualified white teachers available. The above would overload further."

W(3256) N(1455)
"A large percentage would drop out. A large number is married and do not have to teach for a living—they would drop out of the profession."

W(13,032) N(3557)
"We have great difficulty in securing enough white teachers for the white schools. There is a surplus of Negro teachers in this area. We employ the best of the latter. Most of them are not strong teachers."

W(2398) N(875)
"I do not think any white teacher would go to Negro schools (at present Negro). I think they would, most of them, teach in the present schools even with integrated classes."

W(1132) N(118)
"A serious shortage of white teachers already exists and some now teaching will leave the profession rather than teach in mixed schools."

W(3295) N(1900)
"The present supply of adequately trained white teachers is insufficient to teach the white children in the presently segregated schools. The additional white teachers that would be needed for mixed classes are not currently available."

W(7118) N(5259)
"If these were formerly all white schools and the proportion of Negro pupils relatively low, perhaps not. If they were formerly Negro schools, I do not believe white teachers would teach in them at all."

W(5120) N(1683)
"Many white teachers would refuse to teach Negro children.

This condition added to the present shortage of white teachers would create a very serious situation."

W(1006) N(1127) I(1100)
"If immediate integration is effected in our public schools the loss of white teachers and the refusal of the people to allow Negro teachers to serve as instructional personnel would close the schools entirely."

W(4548) N(916)
"We have 30 Negro and 156 white teachers. Our difficulty at present is securing white teachers from the limited supply."

W(2603) N(7753)
"There is at present a severe shortage of properly trained white teachers. I believe that many of those now teaching would discontinue teaching and that many who may be preparing to teach would not enter the profession."

W(17,926) N(7,984)
"Cannot keep vacancies filled now. Anything that makes teaching less desirable will be disastrous."

W(1878)
"Perhaps 20% of our teachers have indicated they would resign from the profession."

W(3885) N(74)
"At the present time it is difficult to secure a sufficient number of trained white teachers for the white schools and it would be even more difficult to secure white teachers for mixed schools."

W(1937) N(928)
"Can't find sufficient number of properly trained white teachers as it is now."

W(3494) N(4163)
"I do not think that it would be possible to find a sufficient

number of white teachers. I am sure that the husbands of many of the married teachers would make them stop if colored children were placed under them. I have heard many white teachers state that they would not attempt to teach a class of mixed races."

W(1755) N(1030)
"Some teachers have expressed themselves to the effect that they would leave the profession."

W(2460) N(2597)
"We can not get enough for the white schools now so I can not see where the extra teachers are coming from to teach an integrated room."

W(9127) N(257)
"Some teachers would accept it, but for many years to come many of the teachers would not. We have many teachers who do not have to teach. They are married and do not have to teach for the money. They are doing it for love of the work and profession. They would stop immediately. Right now we are short five teachers and many are just filling in. We would have a real problem."

W(1987) N(1303)
"We believe that 20% of our white teachers would leave."

W(2297) N(397)
"It is now difficult to secure properly trained teachers for strictly white schools."

W(9783) N(2305)
"We do not have sufficient number of properly trained white teachers to teach in the white schools now."

W(3228) N(2515)
"Some white teachers would drop out of teaching in public schools and go to private schools; it would doubtless be in-

creasingly more difficult to persuade young people to prepare to teach."

W(1139) N(750)
"I find it difficult to find teachers (white) now. Many of them will seek other employment if integration comes."

W(9983) N(4822)
"(a) The salary schedule does not attract teachers.
(b) They have too many other attractive fields to choose.
(c) It is the popular fad—inspired by communistic and anti-public education and religious groups—to harass and annoy teachers.
(d) Teacher certification prevents the use of many college graduates who did not take the required 'education' courses.
(e) The out-of-State teacher who would enter our State has difficulty qualifying in North Carolina."

W(1408) N(2212)
"We have trouble getting properly trained white teachers to teach in all white schools at the present. It would be an impossibility to staff the whole system with white teachers who were properly trained. It might be possible to staff the schools with white people, who are not teachers. I do not know."

W(2577) N(148)
"I am crossing my bridges only as I come to them. I have not discussed this with any of my teachers, because I believe the least said the better. My guess is that no teacher wants to have a mixed group."

W(696) N(157)
"This is purely my personal opinion. This small school system has been more fortunate in relation to teachers than many systems, particularly rural areas. However, I have now some very competent teachers who would likely quit teaching rather than teach mixed classes."

W(6487) N(2276)
"Our Negro and white principals have been meeting jointly for years, and it seems to work very well, but our Negro and white teachers do not mix as well. I doubt that our white teachers would accept Negro childen in their classrooms at this time."

W(4165) N(3107)
"The answer 'yes,' based on the present teacher certification requirements. There is reason to believe that a modification of the requirements would relieve this situation to some extent."

W(1778) N(619)
"At the present time, the white teachers would not teach Negro children."

W(2795) N(1111)
"The 'yes' answer is my opinion for immediate integration; time and gradual adjustment might improve this difficult situation."

W(3901) N(777)
"Scarcity of competent white teachers."

W(1571) N(2236)
"Not available now."

W(638) N(721)
"To the same extent that we have difficulty in securing sufficient number now."

W(1835) N(—) I(393)
"It's hard to find qualified white teachers for all white schools. Many of our teachers would not teach in mixed schools."

W(3738) N(None)
"Such is not possible now. Injecting the racial issue and resulting tension would make it harder to secure the proper people."

W(8661) N(3624) I(91)
"Shortage now."

W(5050) N(303)
"We have difficulty now. Any pupil increase would make the problem more serious."

W(675) N(764)
"We have difficulty in getting enough for our white schools. Some whom we have persuaded to come in might refuse to teach with Negroes."

W(3250) N(1288)
"Too many of our white teachers would resign. Our young white people who might go into the teaching profession would not be interested. The Negro teachers would take over."

W(1831) N(235)
"Many white teachers would leave the field to avoid the complex problems of a social and disciplinary nature. Much chaos would naturally result and the rewards of teaching are not sufficient to keep many of our teachers on the job."

W(1787) N(1575)
"We are having difficulty securing enough properly trained white teachers now."

W(2272) N(2638)
"It would be probably impossible. Then too, I believe that many white teachers would refuse to teach mixed classes."

W(1000) N(675)
"We are all having trouble now in securing well trained white teachers. It will be much more difficult if Negro teachers are employed in white schools. As long as employment can be had elsewhere, young people will not go into the profession and most of those who now can retire will do so."

W(6468) N(4337)
"We are unable to get them for white schools now. Our

troubles would be multiplied. The source of white teachers which is very inadequate, would decrease."

W(9335) N(1587)
"1. They aren't available.
2. Some of them probably would refuse to teach mixed classes."

W(2342) N(2685)
"Unquestionably, integration of the schools would aggravate further the task of securing satisfactory teaching personnel for our schools. Some white teachers would leave the profession, affecting further the shortage of white teachers."

W(8669) N(644)
"There is at present a shortage of trained white teachers. Some of our white teachers would not teach mixed groups."

W(5284) N(All colored children in the county are transported to a consolidated school in the ..... School Unit.)
"Inasmuch as there is a shortage of qualified white teachers now, and with the prospect of withdrawals due to integration, I think the shortage would become more acute."

W(6631) N(313)
"We have difficulty now and while some of our white teachers would be willing to teach in mixed schools, some would not. It would make our present shortage more acute."

W(11,458) N(4441)
"We are having difficulty already. Integration would certainly accentuate the problem."

W(3330) N(2681)
"I feel that our present teachers, the greater part at least would accept mixed classes. To find additional teachers will be very difficult."

W(6314) N(3521) I(250)
"I believe that it would be difficult for us to secure sufficient number of properly trained white teachers to teach in mixed schools. We have very few extra white teachers in our area from which to draw in cases of emergencies at present. Teachers will have to become more plentiful if greater demands are met."

W(1926) N(533)
"Many of present white teachers would leave the profession and it is difficult to find properly trained white teachers for white students at the present."

W(3137) N(2210)
"We are having trouble as it is, but I am sure if we had immediate integration we would not be able to secure a sufficient number of properly trained white teachers to teach in mixed schools."

W(8331) N(4023)
"We would lose those teachers now teaching to help out—also those who feel extremely bitter about the decision."

K

The quotations below are comments made by county and city superintendents of schools in explanation of their answer "No" to question number 13 of the questionnaire which reads as follows:

> "In the event of immediate integration, would you have any reason to believe that the mixing of the races in the public schools of your unit would create serious problems of discipline in these schools?"

The W, N, or I followed by numerals indicate the white, Negro, or Indian school enrollment of the county and city schools of the superintendent answering the questionnaire.

W(2125) N(15) I(113)
"I say no because we have so few colored students. It could

that we would have trouble with the white students, be-
use they would resent them."

(11,458) N(4441)
'oung people are less prejudiced than adults. Any problems
e more likely to emanate from parents than from pupils."

(3669)
nswer is based on what our pupils say. However, in prac-
e, the situation could be quite different. What the reaction
uld be actually when three colored high school pupils are
rown in with 340 white is difficult to foresee. The colored
pils may not be beaten up but they would probably feel
t of place to the extent that they would drop out of school."

(1826) N(1190)
Jo, unless outside agitation caused it."

(1550) N(107)
believe our students would accept the situation once they
alize it is inevitable."

L

The quotations below are comments made by county and
y superintendents of schools in explanation of their an-
ver "Yes" to question number 13 of the questionnaire,
hich reads as follows:

> "In the event of immediate integration, would you have any reason to believe that the mixing of the races in the public schools of your unit would create serious problems of discipline in these schools?"

The W, N, or I followed by numerals indicate the white,
egro, or Indian school enrollment of the county and city
hools of the superintendent answering the questionnaire.

(2432) N(1661)
Evidenced by inter-racial conflicts this year that have never
curred before."

W(3375) N(2733)
"Many of these problems can possibly be worked out on a time basis, but to be forced to go immediately into them would, in all probability, bring about difficulty of adjustment."

W(1051) N(441)
"In high schools the reaction is more noticed than in elementary schools."

W(2256) N(1506)
"(1) Fist fights daily, on class, in corridor, on campus. (2) All elections on racial lines—no Negroes will be able to win. (3) Moral tone between the two races is at a distinct variance. Morals are not a real necessity to perhaps a majority of colored race. White people do not share this point of view."

W(2262) N(1835)
"This is my honest opinion after listening to adults. Many of them are leaders in the Church and Community."

W(2796) N(782)
"If older students are integrated, there will naturally result serious disciplinary problems. Should the integration begin in the primary grades, there would not likely develop many serious disciplinary problems within the school itself."

W(3281) N(811)
"This would be true on the high school level. In the primary grades, no."

W(4427) N(26)
"It appears to me that such problems are the inevitable consequence of integration in any system."

W(6724) N(1827)
"You cannot force social relationships upon people. Normal social activities now carried on by schools, such as class dances and parties, would be impossible. Colored children would have a tendency to resent and reject control by white

teachers and white children would not accept correction from colored teachers. An accusation of unfairness would be made in most instances when it became necessary for colored children to be disciplined. If Negroes are permitted to force their way into the white schools, they will have a tendency to attempt to use the same tactics in freeing themselves of the normal controls which are necessary in schools. Such a situation is reported to exist in California and other areas where children are now mixed."

W(1795) N(194)
"Different standards of conduct?
Different standards of moral responsibility?
(If a Negro child is corrected or punished (disciplined) you are, at once on the defensive?")

W(3256) N(1455)
"The trouble would start with the parents and carry over to the students into the school."

W(13,032) N(3557)
"In sections of this county, we have difficulty between the races if the children use the same bus stops even though they they get on separate busses. Our best solution under present conditions is to have these students to congregate at separate places, and to keep them separate."

W(2398) N(875)
"Judging by what is happening elsewhere."

W(6253) N(50)
"Among the children themselves."

W(3295) N(1900)
"Immediate integration will bring some problems of discipline in the classrooms. The greater the problems of discipline will be created in the cafeterias and extra-curricular activities such as athletics, glee clubs, and physical education activities."

W(5120) N(1683)
"There would be incidents frequently which would be very difficult to handle. All activities of a recreational or social nature would be filled with incidents and very explosive. We could conduct 'classes' provided we could have enough special police officers posted at the right places to keep order before and after school and at recesses. Every school of 300 would require at least two such officers."

W(420) N(333)
"We would have serious trouble."

W(1006) N(1127) I(1100)
"I think the matter of guiding public reaction and maintaining order or affecting discipline would be impossible and I believe in all sincerity that chaos would engulf our school district."

W(2812) N(1868)
"Definitely!"

W(4548) N(916)
"Definitely—disciplinary problems would increase."

W(17,926) N(7984)
"Hazing and 'ganging up' on the unwanted will be at a maximum in my judgment."

W(1878)
"Discipline problems would be numerous in the elementary schools, possibly not many problems at the high school level. Our high school pupils are well conditioned in discipline."

W(1937) N(928)
"I am afraid that fighting and rioting would get out of hand."

W(3885) N(74)
"It would be practically impossible to secure the cooperation

of the parents in the matter of maintaining discipline should there be immediate integration."

W(9783) N(2305)
"The pattern of strikes by students in other states would be followed in this area."

W(2297) N(397)
"I do not believe that white children would immediately accept integration without serious objection. However, I believe that children would come nearer doing so than adults."

W(9127) N(257)
"In time this could be overcome, probably. But from all evidence now, I can see serious problems arising from the angle of white and colored. Both would create problems for each race."

W(2460) N(2597)
"I am satisfied that the large boys and their parents would resort to violence."

W(3494) N(4163)
"Both races would be at a disadvantage. I think there could be no extra-curricular activities except possibly in athletics, and I doubt it even here. Perhaps the many athletic contests viewed by visitors to all sorts of contests where Negroes are playing and seeing so many Negroes on TV in baseball, basketball, football, and boxing might cause the impact to be less in athletics. All class plays, banquets, dances, and activities of this nature would be suspended."

W(4224) N(66)
"This would be an influence from the homes which would be rather difficult to cope with."

W(5928) N(777)
"Particularly in the high schools."

W(2774) N(3036)
"Comments and even threats support the above answer."

W(3270) N(409)
"The problems would be much more serious than the numbers involved would indicate."

W(1130) N(811)
"This would be one of our most serious problems."

W(2577) N(148)
"How serious I do not know, but it certainly would create some problems of discipline."

W(696) N(157)
"I have no doubt but that discipline problems would arise. Many of the objections to integration are based on deep feeling not just spur-of-the-moment behavior. Some students would come to school, if compelled to attend, with the intention of making trouble and with the tacit encouragement of parents."

W(6487) N(2276)
"There continues to be considerable antagonism between teen-agers of the two races. I doubt if this can be attached to either race. It seems to be largely a mutual feeling."

W(4165) N(3107)
"It would mean the elimination of most of the school sponsored social activities that are now carried on in the schools of both races. These activities are important factors in building and maintaining pupil morale and school spirit."

W(1778) N(819)
"Riots."

W(3228) N(2515)
"Serious problems would arise in all grades, particularly on

the high school level. Adult prejudice would perhaps be the greatest factor."

W(9983) N(4822)
"(a) Sexually the Negro race develops much earlier than the white race. Court records of recent weeks show Negro 6, 7 and 8 years olds guilty of sex offences. This situation would 'blow the top' off the lid when the white parents learned of the difference in standards of sex behavior.
(b) The over-age Negroes are easy victims of dope vendors, et cetera because they crave money to keep up with the white boys. Northern Superintendents tell us this is a major problem in mixed schools. We may expect the racketeer to move in as he has in northern mixed schools.
(c) The white pupil of low mentality, on par with the Negro, would most violently resent being classified with him in classes. The result would be obvious to any Principal."

W(1408) N(2212) I(230)
"I was a teacher and principal for 19 years. I do not believe that there was a day of those 19 years that, at least, 2 little boys didn't get in a fight. If the races are integrated, the boys will fight, not because one was white and one was black, but because they were little boys. Each would go home and tell about the fight. Then the fathers would go hunting for one another, and your race riots would start."

W(2795) N(1111)
"I believe that prejudices that are stronger among adults than among children would seriously interfere with the school program. In addition, parents whose minds are open would be seriously concerned by the possibility of controversy, disturbances, enforcement of the strict discipline that would be necessary, and by the possibility of physical injury to children through internal or external agitation."

W(3901) N(777)
"Although for years the relations between races have greatly improved and is continuing to improve gradually, and forced

mixing would seriously interfere with the improving relations between races. Good folks get along all right with good folks regardless of color; forcing a mixture of races in or out of schools simply gives opportunity for the wrong people regardless of race to make trouble."

W(1675) N(675)
"They have never before been together in any form of activities. Therefore, they are not prepared for such a thing. There will be trouble where it is begun."

W(6468) N(4337)
"I am sure it would be impossible to maintain discipline. Several of our principals who can earn a living doing something else have stated they would not undertake it. They would resign and leave it for others to attempt. These are our best and most capable principals."

W(3807) N(2236)
"Due to strength of both groups, race hatred and bitterness would soon develop."

W(638) N(721)
"Fights, cuttings, mob action would employ all of our time. Our Negroes do not want to come to white schools and the whites aren't going to have them."

W(1835) N(None)
"A great many of our parents are determined that their white children will not attend mixed schools."

W(8661) N(3624) I(91)
"Best example is where it is now being tried."

W(999) N(1062)
"What is now happening in the Northern and border States would be multiplied in Eastern North Carolina."

W(3388) N(329)
"The children in all probability would behave in their rela-

tionship to other children in the way they were instructed at home. Ordinary problems of discipline in the schools could be taken care of without too much trouble. The new type problems of discipline would be something that we would have no experience as a precedent in coping with."

W(1270) N(1090)
"My answer is based on my knowledge of and experience with high school boys and girls."

W(675) N(764)
"The maturity and achievement level, in general, are so different that integration would be difficult. There is some friction from 'advanced' pupils being in the same grade with all members of the same race."

W(3250) N(1288)
"In all the grades, both elementary and high school, there would be bedlam! Moral and immoral together would make a poor combination. The immoral generally win out. In the first place, the white people in ..... County will not send their children to a mixed school."

W(2272) N(2638)
"Prejudice of races in patrons, pupils and teachers would, in my opinion, make the problem of discipline unbearable."

W(13,996) N(1604)
"In some areas."

W(8669) N(644)
"Most of the trouble would come from the influence of the parents on the students."

W(6631) N(313)
"Neither race wants it and when people of either color are forced into a situation they resent, trouble usually follows."

W(3330) N(2681)
"In the following areas:
1. Lunchrooms
2. Toilets
3. Social contacts"

W(1926) N(533)
"Not in the lower grades but there would be disciplinary problems in upper grades due to adult influence."

W(2629) N(953)
"Perhaps gradual integration could be worked without serious problems of discipline, however, immediate integration would thrust upon both races a new world for which they are totally unprepared."

W(6314) N(3521) I(250)
"It is my opinion that it will be many years before children of mixed races will be able to attend school under the same roof peaceably."

W(3137) N(2210)
"When the white child is punished, I am afraid in many cases the friends and relatives will take the law in their own hands. When the Negro child is punished, and it is believed to be wrong, the relatives and friends will appeal to the courts on the grounds of discrimination."

W(2342) N(2685)
"54% of ..... school children are Negro, 46% white. Mixing of the races in schools would present serious problems in the area of school management. Assignment of children geographically, irrespective of race, would leave white in the minority in some school situations. Prejudice and hostility would be engendered on both sides."

W(14,452) N(2475)
"It would certainly cause problems. Their seriousness is hard to forecast."

W(5542) N(3469)
"It is believed that Negro children will not be accepted in a friendly way by white people."

W(8331) N(4023)
"Especially in High School."

M

The quotations below are comments made by county and city superintendents of schools in explanation of their answer "No" to question number 14 of the questionnaire which reads as follows:

> "Would such an integrated program seriously affect the extra-curricular activites in the school in your administrative unit?"

The W, N, or I followed by numerals indicate the white, Negro, or Indian school enrollment of the county and city schools of the superintendent answering the questionnaire.

W(7416) N(148)
"This is a qualified 'no' and the reason is due to the small number of children."

W(2577) N(148)
"Not seriously, because only a very small number of Negro children would be involved. Possibly 15 Negro children in a school of 400. Zoning as we now practice it for white children would keep them from entering any other school."

W(2905) N(798)
"Negro children would probably be given or have less opportunity for participation especially for positions of leadership "

W(6253) N(50)
"Not enough involved to affect this item seriously."

W(11,458) N(4441)
"Only social functions would be materially affected. We

have few of those. The ones we have would have to be eliminated or modified."

W(3330) N(2681)
"We have few 'extra' activities. Possibly the athletic team might give some difficulty."

W(1926) N(533)
"Not unless strict integration is imposed initially."

N

The quotations below are comments made by county and city superintendents of schools in explanation of their answer "Yes" to question number 14 of the questionnaire, which reads as follows:

> "Would such an integrated program seriously affect the extra-curricular activities in the schools in your administrative unit?"

The W, N, or I followed by numerals indicate the white, Negro, or Indian school enrollment of the county and city schools of the superintendent answering the questionnaire.

W(6724) N(1827)
"There are many people who would accept the mixing of children in school classes who would not accept under any circumstances the mixing of children where 'sex,' marriage, and boy-girl relationships are involved. The mixing of children would be a divisive force among students and would cause disruption of any extra-curricular activities."

W(4427) N(26)
"Again, answer applies primarily to the one school seriously affected. In the area of inter-school athletics, this problem could be troublesome in all schools."

W(2796) N(782)
"Social activities such as junior-senior dances would be seri-

ously affected and would likely be dropped as school-sponsored activities. Athletics and sports will probably work out all right."

W(2262) N(1835)
"I do not believe that the high school white youth will mix with Negroes (at least not yet)."

W(1051) N(441)
"Mostly in high school. In music and athletics, it would help the extra-curricular program. Clubs and social activities would create a problem."

W(2301) N(1702)
"In an integrated program, all extra-curricular programs would have to be eliminated."

W(1523) N(1455)
"Social functions, probably athletic programs, class activities, would have to be curtailed or completely eliminated."

W(3534) N(646)
"We would be forced to eliminate all socials to avoid violence. It is doubtful of the continuance of athletics for sometime."

W(9619) N(7122)
"Many extra-curricular activities sponsored by the schools are of a social nature and controlling these would present some serious problems. It will be difficult to control integration in the classrooms and shops, to say nothing of the extra-curricular program."

W(1132) N(118)
"In about the same degree as it would affect all other school activities."

W(3295) N(1900)
"White people in our area are nearly unanimous in their desire to maintain racial integrity, socially and biologically. If

there is immediate integration, such extra-curricular activities as dramatics, so-called 'Junior class plays and Senior class plays' in high schools, and Junior-Senior class banquets will have to be abolished. Athletics might survive."

W(6253) N(50)
"Not enough involved to seriously affect in this item."

W(2398) N(875)
"This would require complete revision."

W(13,032) N(3557)
"If an attempt is made to force integration, and any degree of success is achieved, I believe that all extra-curricular activities would be abolished since there would be no participation without force on the part of white students."

W(4711) N(1455)
"Extra curricular would come to a standstill and be abandoned."

W(1795) N(194)
"What about school parties, dances, etc.? Athletics (dressing rooms, toilets), Glee Club, Band (uniforms), Trips, (buses), School Plays?"

W(1878)
"Except in the field of athletics. Integration would not work at their banquets and proms."

W(17,926) N(7984)
"We make much of our home room, club and class social activities. With both races in the school these social activities will be at a minimum or not exist."

W(2603) N(7753)
"For the same reasons that there would be serious discipline problems."

W(4548) N(916)
"This would probably be affected to a lesser degree than any other phase of school life, yet it would create unnecessary problems."

W(2812) N(1868)
"Yes, I think such activities would have to be curtailed or discontinued."

W(1006) N(1127) I(1100)
"Not only would such an integrated program seriously affect the extra-curricular activities, but it would dissolve the program of extra-curricular activities and at the same time deactivate what is commonly known as the public schools and all of the educative processes that are characteristic at the present time of this school district."

W(7118) N(5259)
"It would completely eliminate most social functions."

W(5120) N(1683)
"Extra-curricular activities would have to be abolished where there are Negroes in large numbers. It is the 'social element' involved in extra-curricular activities which would be so explosive. The old southern family proverb, 'You can work with them, but you can't play with them,' applies here."

W(4224) N(66)
"Both races would be at a disadvantage. I think there could be no extra-curricular activities, except possibly in athletics, and I doubt it even here. Perhaps the many athletic contests viewed by visitors to all sorts of contests where Negroes are playing and seeing so many Negroes on TV in baseball, basketball, football and boxing might cause the impact to be less in athletics. All class plays, banquets, dances, and activities of this nature would be suspended."

W(2774) N(3036)
"Objections have already been made to this phase of the pro-

gram. In fact, the prospect of any social integration is alarming to white patrons of our communities."

W(6211) N(1837)
"Markedly so. Would eliminate extra-curricular activities and social aspects of high school program—at least for some years. This is the opinion of principals."

W(1987) N(1303)
"It is our belief that all extra-curricular activities would have to close."

W(9127) N(257)
"We have never seen discrimination such as would exist if they were put together. The few colored children would not get a chance."

W(2460) N(2597)
"I believe pupils would have to understand each other fairly well to work on any of the extra-curricular activities. This means understanding each other socially. Not many of our older pupils could do this."

W(3885) N(74)
"At the present time the Negro students participate in extra-curricular activities in their own school. Should they attend a mixed school, the white children, in all probability, would not accept the Negro children as participants in extra-curricular activity."

W(9783) N(2305)
"Considerable difficulty would follow in the social activities, athletic program and other extra-curricular activities."

W(1937) N(928)
"Whites will not mix socially with Negroes."

W(5928) N(777)
"Negroes would not be chosen to participate in extra-curricular activities."

W(1139) N(750)
"Dances, Proms, Banquets, etc., would be discontinued by our schools. Parents would demand this be done."

W(1130) N(811)
"Extra-curricular activities would be hampered even more than co-curricular activities."

W(696) N(157)
"Extra-curricular activities are often social in nature, and even those whites who would not object to being in a formal class with Negroes are not willing to enter into any social situations with them. In fact, they have no intention of doing so."

W(6487) N(2276)
"Integration would terminate some extra-curricular activities, particularly those of a social nature. There exists considerable anxiety on the part of parents of white girls about their safety and welfare."

W(4165) N(3107)
"The difficulty of supervision would lead to the elimination of many activities and the curtailment of others."

W(3228) N(2515)
"The school could not sponsor social activites, including folk dancing and similar activities. Junior-Senior banquets and school dances would have to be abolished."

W(1408) N(2212) I(230)
"Everything other than the baccalaureate and graduation exercises would have to be discontinued. Bus trips to Washington, Raleigh, Chapel Hill, Durham, to any college, Jr.-Sr. Banquet, Jr.-Sr. Prom, Junior or Senior Play, any dance, class picnic or party in fact, anything even bordering on the social would have to be cut out."

W(2795) N(1111)
"The many phases of a good extra-curriculum program in-

clude social, cultural, personal, and small-group activities. A radical and sudden change in the pattern would make it difficult to administer effectively most, if not all, extra-curricular activities, in my opinion."

W(3901) N(777)
"In athletics some occasional trouble would arise. In all other group activities an integrated program would encounter trouble whether in day or night time."

W(9983) N(4822)
"(a) The choice would be, racial amalgamation or no social activities.
(b) The Negroes' earlier physical development would give him a great advantage in athletics to the detriment of the white pupil.
(c) The racial characteristics of Negro music would be submerged and rendered less attractive in mixed groups, as happens in the north.
(d) Clubs, societies and travel groups would have to accept the Negro or the Negro would lose all that they now have of their own in agencies to develop leadership and self confidence. Now all Negro high school organizations have Negro leaders, (and they are excellent). The cases of leadership would be rare if amalgamation were attempted.
(e) Class meetings in homes of parents would be difficult to arrange."

W(1835) N(None) I(393)
"In a social way."

W(1571) N(2236)
"Race hatred and bitterness would soon develop."

W(6468) N(4337)
"It would not only seriously affect extra-curricular activities, it would bring an end to such activities. We would not be foolish enough to have a mixed audience of white and Negro parents to observe such an activity. Our graduation exercises

would be simply to hand the diploma to seniors on the last day of school and wish them well. A class party or dance would be out of the question. It would bring an end to all extra-curricular activities."

W(1000) N(675)
"All social activities of our schools would have to be discontinued."

W(2272) N(2638)
"I think it would affect the extra-curricular activities due to their nature, more than it would the regular curriculum. I believe that with integration it would be necessary to curtail greatly all extra-curricular activities."

W(3250) N(1288)
"In the Negro schools as they are now, leaders are selected and have a chance to lead. In a mixed school, these chances would fade out of the picture. They would be losing the chances they now have. This would seriously injure the Negro children and hamper the chances of all others."

W(675) N(764)
"They would probably be abolished since white pupils would refuse to participate, with rare exception. Actually, there would likely be no white pupils, or few, in the 'mixed' school."

W(1270) N(1090)
"Many of the extra curricula activities are social in nature. We would have to eliminate many of the activities as they are now."

W(3388) N(329)
"Actually this is what our people are concerned about. It is the extra-curricular, especially social activities in our schools that the parents are concerned about. What about your Junior-Senior proms? What about your football-basketball coca-cola parties? How would you handle your junior-senior ban-

quets? How about cafeteria and lunchroom situations? This breaking down of the racial and social barriers and throwing the children together in intimate social and personal contact will lead to love and affection with inter-marriage. Then you have what Hitler said, 'A Mongrel Race'."

W(999) N(1062)
"It might not in the purely academic activities but it would in all of the social activities. Our people are not ready to accept mixed parties, dances, and other social activities."

W(1550) N(107)
"In the extra-curricular activities, music, athletics, and dramatics, there would be contact with the general public where controls are much more difficult than in regular classroom activity."

W(1787) N(1575)
"It would be most difficult to have any type of extra-curricular activities."

W(2342) N(2685)
"Integration of the races would require many changes in existing school organization, including the entire program of pupil activities."

W(9335) N(1587)
"I think the danger of real trouble would be greatest in what we consider the social phase of school life."

W(3137) N(2210)
"Extra-curricular activities are different. Individual differences would increase. In many instances, I believe the white children would refuse to accept the Negro children unless *force* was applied."

W(6314) N(3521) I(250)
"If children of different races attend the same school, I believe that many problems dealing with extra curricular activi-

ties will be increased. It will take an extensive educational program and much time before Negro and white children will be able to carry on school activities in mixed groups."

W(2409) N(562)
"We consider this one of the most difficult problems, with the most serious results, that we would have to face."

W(8669) N(644)
"It would definitely curtail all student activity that is based on voluntary student participation."

W(13,996) N(1604)
"All social events will be called off."

W(8331) N(4023)
"Would eliminate all social activities."

O

The quotations below are comments made by county and city superintendents of schools in explanation of their answer "No" to question number 15 of the questionnaire which reads as follows:

> "Would, in your opinion, such immediate integration of the races cause parents in large numbers to withdraw their children from such schools?"

The W, N, or I followed by numerals indicate the white, Negro, or Indian school enrollment of the county and city schools of the superintendent answering the questionnaire.

W(2373) N(4419)
"Not permanently."

W(1132) N(118)
"Not in large numbers, but some would do so."

W(1878)
"Not in *large* numbers, but there would be several."

W(9783) N(2305)
"It is not believed that large numbers would withdraw but there would be some withdrawal of children who would be sent to private schools."

W(11,458) N(4441)
"I think there would be little withdrawal from the local schools. I anticipate that a number of people would request transfers where a sizeable percentage of Negro pupils has been enrolled."

W(2571) N(1559)
"We could anticipate a temporary withdrawal but absence of other school facilities would probably force the return of pupils to public schools."

W(3330) N(2681)
"They might for a few days or weeks. There is no place for many of them to go. Eventually they would return."

W(2629) N(953)
"I am quite certain that some parents would withdraw their children from mixed schools. I do not feel at the present time that the number would be large."

W(2795) N(1111)
"My 'no' answer is based on the small number and capacity of private schools in North Carolina where the public schools have been and are effective and upon the cost of instruction in private schools. I believe many parents would eventually make the change, withdrawing children from public schools as quickly as conditions would permit."

P

The quotations below are comments made by county and city superintendents of schools in explanation of their answer "Yes" to question number 15 of the questionnaire which reads as follows:

"Would, in your opinion, such immediate integration of the races cause parents in large numbers to withdraw their children from such schools?"

The W, N, or I followed by numerals indicate the white, Negro, or Indian school enrollment of the county and city schools of the superintendent answering the questionnaire.

W(3494) N(4163)
"From what is now happening in Washington, D. C., Delaware, Maryland, Ohio, and West Virginia, I am sure that the parents in ..... County would not for a moment accept integration."

W(6211) N(1837)
"I believe that most parents would send their children to school, since they would have little alternative to do otherwise."

W(1755) N(1030)
"Many white parents have expressed themselves."

W(2460) N(2597)
"Our people are not prepared to accept integrated schools. I am curious to know how we can prepare them."

W(9127) N(257)
"In some schools. Take ..... for instance. This school covers a large area of the mountain section of our county. They are looking for an excuse to keep their children out, and do. Many would stay out. I have already been told in no uncertain terms that when Negro children come in the whites will go out."

W(2774) N(3036)
"We cannot anticipate the duration of the withdrawals, but it would require strict force to compel attendance."

W(1826) N(1190)
"Yes, if immediate. No, if gradual."

W(2297) N(397)
"Not in large numbers. Most parents would have no choice if their children are to attend school anywhere."

W(3885) N(74)
"Parents in large numbers are strongly opposed to the Integration to the public schools."

W(2301) N(1702)
"Parents have told me that they will start private tuition schools if the integration program is carried out now."

W(2262) N(1835)
"Several ..... Club members—good, solid, substantial citizens—have told me that they would pay *any price* to send their children to all-white private schools."

W(2796) N(782)
"Many who could afford it would send their children to private schools."

W(6724) N(1827)
"Sufficient evidence is coming to us from 'fringe' areas such as Delaware to indicate that parents would protest and withdraw their children from schools. If there are protests there, there could be violence in the deep south."

W(3281) N(811)
"This would happen at first, but later the children would return."

W(2398) N(875)
"Most would not stay away long. Those who could would send their children to private schools."

W(13,032) N(3557)
"I cannot conceive of there being enough law enforcement in this county to make the majority of the people send their children to integrated schools. Most of them will stop school

As many as can will either move their place of residence or send their children away from home to private schools."

W(3256) N(1455)
"Parents would withdraw their children from school."

W(1795) N(194)
"Financial ability considered—would either send to private school or take them out of school to avoid possible trouble or violence?"

W(420) N(333)
"A large number have voiced the opinion that they would send the children to private schools."

W(17,926) N(7984)
"Even the attempt at integration in the parochial schools in ..... has had that effect."

W(2703) N(7753)
"I have heard many people make this statement."

W(4548) N(916)
"They would move to those sections where there is no Negro population."

W(9983) N(4822)
"(a) In the north, few parents who can afford the cost of private schools send their children to mixed schools, if the percentage of Negroes is appreciable. Note: Please name a northern school system that has an acceptable or tolerable plan of mixed schools.
(b) Parents who are able move away from districts with mixed schools.
(c) Religious and private groups are already preparing space to take care of a major exodus from the public schools.
(d) Many parents are making plans for private school education for their children in case the integration takes place.

This would cause a social caste system that would be most un-democratic."

W(3901) N(777)
"Rural and textile people will not readily integrate; and urban people will not too readily do so. Most people regardless of race are pleased with present segregation basis."

W(1408) N(2212) I(230)
"Parents of both races would refuse to send their children to mixed schools. Quite a number of Negro parents in ..... County have stated that they would not send their children for fear of trouble."

W(3228) N(2515)
"It would probably lead to rapid growth of private schools."

W(4165) N(3107)
"Many parents who are financially able would send their children to private schools. This would mean the loss of the support for public education of a rather influential group of our citizens."

W(6487) N(2276)
"I have heard many parents say they would enroll their children in private schools, if possible, before they would allow them to attend classes in which there were Negro children."

W(638) N(721)
"If physical violence would not predominate and prevent integration previously."

W(1550) N(107)
"The issue might be used for a while as an excuse for a few who would just as soon their children stay at home. We have few families who could or would try to send their children to private schools."

W(999) N(1062)
"A number of parents have already told me that they will send their children to a private school if non-segregation ever becomes a fact in the public schools. This would be a serious blow to public school morale if the well-to-do send their children to all white schools and the poorer classes have to send their children to non-segregated schools."

W(3388) N(329)
"The parents in withdrawing their children from school would not necessarily send them to another school. There would be a vast number who would take advantage of our unsettled situation to keep them out of school, thereby carrying out a latent wish always held by them. There are a few parents, not over 10% who would try to get their children into private or parochial schools. In our part of the country we do have Missouri Lutheran church schools."

W(3259) N(1288)
"The wealthy or those who could afford to do so would send their children to private schools. The poor whites would be at a great disadvantage. This would cause us to have the high grade and the low grade among the whites. India has enough of the caste system. We need to avoid this."

W(2272) N(2638)
"The reactions in West Virginia, Delaware, Maryland and the District of Columbia are only minor compared to the withdrawal of children from school by parents that would take place here."

W(1006) N(1127) I(1100)
"Statements by political and community leaders have indicated that there might be two elements of our population who would not withdraw their children from schools; these being, namely; the less fortunate whites and low-moral Negroes. My personal opinion is that our system of public schools would be destroyed and only those referred to above would attend school for the novelty created, and as soon as

this became old to them, they would revert to their present mode of living where the attendance laws have to be constantly exercised at the present time."

W(7118) N(5259)
"The number would depend upon other facilities available. Some would perhaps withdraw them in the absence of any facilities unless forced by law to send them."

W(5120) N(1683)
"Nearly all parents of white children would withdraw their children from school at first, but some would later allow their children to attend with reluctance. The attendance laws could not be enforced. There would be demand for abolishing all compulsory school attendance laws. There would be agitation for reduced school appropriations and probably complete abolition of the public school system."

W(3270) N(409)
"I would consider 100 or more children to be large numbers."

W(1000) N(675)
"Private classes will be organized with some of our older and better teachers leaving the public schools for this type of work."

W(6468) N(4337)
"Poorly equipped private schools with poorly trained teachers would be the result. Our schools would lose the gains of forty years within a year. Some of our churches are now planning to establish private schools. The families with above average income would attend those. The children of the poor would attend no school at all."

W(1571) N(2236)
"Remarks by parents in recent conversations."

W(1835) N(None) I(393)
"In our district we already have one first to eighth grade

parochial school. If immediate integration is ordered, we will have many, many more children to attend these church schools."

W(1821) N(428)
"Only a few."

W(696) N(157)
"Even the large element of our ..... population which come here from Northern states would likely enter their children in private schools. There have been some meetings already in this area to consider forming a private school here. Some of those who have publicly endorsed integration in the name of 'equal rights,' etc., attended such a meeting. Some of my teachers were invited."

W(1130) N(811)
"They would either withdraw children or refuse to allow Negro children in now-all-white-schools."

W(1139) N(750)
"Feeling here, with our large percentage of Negroes, is bound to be greater than that displayed in Delaware, Baltimore, and Washington. Private schools would get some of our children from wealthier families. Others would boycott the schools."

W(2577) N(148)
"Some parents would withdraw their children and send them to another school or even move to another part of town."

W(7416) N(148)
"This might depend to some degree on the reaction in other localities."

W(4194) N(3378)
"We have had several parents who have said in the event of integration of the races that they would withdraw their children from public schools and send them to private schools.

Many of the white parents have said that they would do all in their power to prevent the mixing of the races."

W(2125) N(15) I(113)
"Many parents have stated that they will refuse to allow their children to attend school with the colored people."

W(8669) N(644)
"To attend private schools and other public schools that would not have any Negroes. (Some of our elementary school districts do not have any Negroes living in them.)

W(6314) N(3521) I(250)
"I have talked with many parents relative to the problems connected with integration of races in our public schools. I have not met the first parent that is willing to send his child to any school where other than white children are present. I am confident that our white patrons would withdraw their children from our schools."

W(3137) N(2210)
"As stated before, I believe the white children would walk out and it would take force to make them attend."

W(9335) N(1587)
"I've heard some say that."

W(15,551) N(410)
"It is my opinion that the enrollment in private schools would increase rapidly."

W(1926) N(533)
"All parents financially able to do so will send children to private schools. Many parents will have to be forced to send their children to school."

W(6631) N(313)
"Many will withdraw their children from such schools and organize private schools where they are able to finance it. Others will keep them at home."

W(8112) N(2177)
"One private school has already begun operation."

W(8331) N(4023)
"Some would send to private schools others would use the issue as a basis for non-attendance."

W(5542) N(3469)
"I cannot predict what will happen."

Q

The quotations below are comments made by county and city superintendents of schools in explanation of their answer "No" to question number 16 of the questionnaire, which reads as follows:

> "Is there such difference in the average attainments between white and Negro children as to seriously impair instruction in mixed schools?"

The W, N, or I followed by numerals indicate the white, Negro, or Indian school enrollment of the county and city schools of the superintendent answering the questionnaire.

W(3168) N(3059)
"Equal school plant facilities will provide equal instructional program."

W(3901) N(777)
"I do not believe that ability of pupils in either race would have much influence in either segregating or not segregating."

W(3669)
"The small number of colored children to be absorbed would make little difference."

W(6253) N(50)
"Not enough affected."

W(2460) N(2597)
"I do not know how to answer. There is not as much difference as the white people think there is."

W(9127) N(257)
"I don't think so."

W(1826) N(1190)
"The range of achievement and intelligence may be some greater, but this would be no great handicap."

W(2297) N(397)
"The average attainment is somewhat lower in our Negro schools, but there is a wide variation in any grade and we have learned somewhat to teach pupils on their own level."

W(11,458) N(4441)
"The average is only about one to two grades. The spread in any regular grade is much greater than that."

W(2125) N(15) I(113)
"Our one colored teacher is a very fine teacher. Her pupils compare favorably with the white children, who have about the same opportunities."

W(8669) N(644)
"There is not as much difference in this county as in many others due to the fact that the Negro child in this county has had better educational opportunities than many of our white children. The average intelligence of our Negroes is above that of many other sections."

R

The quotations below are comments made by county and city superintendents of schools in explanation of their answer "Yes" to question number 16 of the questionnaire, which reads as follows:

"Is there such difference in the average attainments be-

tween white and Negro children as to seriously impair instruction in mixed schools?"

The W, N, or I followed by numerals indicate the white, Negro, or Indian school enrollment of the county and city schools of the superintendent answering the questionnaire.

W(2256) N(1506)
"We feel that Negro children are almost two grades behind white children; that is, the Negro 10th grader could not do the work of the white 9th grade and would have to be sent to the 8th."

W(3375) N(2733)
"The educational background of children has a tremendous influence on the level of the attainment in the various grades in any school system. The average educational level of Negro parents and homes is far below that of whites. That would have a tendency in the average case to set up serious difficulties of attainment at the various grade levels."

W(5074) N(1287)
"We have records covering 18 years and they show considerable difference. Our achievement records show Negro children are over 2 years behind whites by the time they reach 8th grade. These are continuous records—given and kept by trained testing persons."

W(4427) N(26)
"This question is debatable, but there is some evidence to the effect that average attainment differs between the races."

W(1523) N(1455)
"According to standard tests, the white children will average two years above the Negro children in achievement."

W(3534) N(646)
"Achievement scores of tests given to colored and white children in the 4th and 6th grades during 1953-54 showed differences as follows:

4th Grade—White children scored an average of 1.6 (nearly 2 years) higher than colored
6th Grade—White children scored an average of .9 (full year) higher than colored.
On Grade Expectancy, white children scored an average of 1.4 (1 year, 4 months) higher than colored children in the 6th grade.
In the 2nd grade, white children scored an average of .8 (nearly a year) higher than colored children."

W(2373) N(4419)
"This is one of the major problems."

W(2262) N(1835)
"Our I. Q. Test records and achievement test records show a great gulf in the *average* ability of any given Negro group as contrasted with a similar grade, or group, of white children."

W(2796) N(782)
"In general, I do not believe the degree of excellence or attainment is found in the average colored school that is expected in white schools. If mixed, children of like grades would likely range even more than they do now in the individual schools. Proper classification of students will probably bring forth cries of 'discrimination'."

W(6724) N(1827)
"We have evidence from test records that the achievement of the average colored student is about two years below the average for white children."

W(3281) N(811)
"My observation in both white and Negro schools leads me to this conclusion."

W(9619) N(7122)
"Last year, a Stanford Achievement Test was given during the 7th school month to all the white and Negro children in

the 5th and 7th grades of the city schools. The normal score for the average 5th grade child at that period in the school year should have been 5.7 (5 years and 7 months of school), and for the child in the 7th grade, 7.7. When these tests were scored and checked, we found the results indicated below:

Fifth Grade

	White	*Negro*
Median Chronological age	11 yrs. 2 mos.	11 yrs. 4 mos.
Median I. Q.	99	85
Median Achievement Level	5.8	4.6

Seventh Grade

	White	*Negro*
Median Chronological Age	13 yrs. 2 mos.	13 yrs. 4 mos.
Median I. Q.	98	85
Median Achievement Level	7.7	6.7

These test results indicate quite clearly that in these two grades the Negro children, while 2 months older than the white children in the same grade, have, on the average, lower intelligent quotients, and their grade achievement (the ability to do the work of a particular grade) is from a year (7.7 - 6.7) to a year and 2 months (5.8 - 4.6) below that of the white children of that grade."

W(1878)
"This answer is not based on observation; it is merely my own opinion."

W(2603) N(7753)
"Generally speaking, the attainment of pupils in a given grade is lower in the Negro schools than in the white schools."

W(17,926) N(7984)
"In the high schools the difference in grade level amounts, on the average, to 3-5 grades."

W(1795) N(194)
"Check the results made in ..... Tests (..... Co.). Levels of attainment at present would increase our problems? Please note—I am giving only a small number of reasons—with ques-

tion marks, as no time allotted for proofs, etc. Many more valid reasons are applicable, I am sure."

W(3256) N(1455)
"It would seriously impair instruction and achievement. The requirements for promotion in Negro schools seem to be lower than those of the whites. This being true, it would seriously retard the achievement and the level of instruction several decades.

W(13,032) N(3557)
"We have had, down through the years, evidence to show that the Negro students are two or three grades behind the white students, on a basis of objective test results. The results show that the difference is greater, the higher in the grade level, even though the selection of the Negro students in the higher grades, due to the loss from schools of those who don't succeed in school, is decidedly in favor of the Negroes. There are greater differences in experiences, background, etc. than in the subject matter field between the Negroes and whites."

W(2398) N(875)
"Standard test scores do indicate from one to two years difference."

W(8578) N(3442)
"Almost any good test given anywhere in the State would substantiate this answer."

W(3295) N(1900)
"There is a difference in cultural achievement of white and Negro children largely because of environmental background. White children as a rule at a given age have larger vocabularies and have developed more concepts which enable them to learn new subject matter more rapidly. This information is factual and has been obtained from administering objective achievement tests."

W(5707) N(1147)
"This answer based on test score given over a period of years."

W(7118) N(5259)
"The results of all standard tests which we give to both races show the average Negro pupil as two grades behind the average white pupil."

W(755) N(522)
"This reply is based upon the scores made by students on standard achievements given twice each year."

W(2812) N(1868)
"Test results and observations indicate conclusively that achievement of Negro children is below that of whites. Economic and social history have possibly been contributory factors. It is my opinion that the same comparison between white and Negro teachers would produce similar conclusions."

W(4548) N(916)
"The great majority of Negro children do not have the home background and mental ability to compete with white children of the same age. Some do have high intelligence and could compete most successfully."

W(5120) N(1683)
"Some of the Negro children could keep pace with the white children in scholastic attainment, especially those of mixed blood, but on the average, the ability of the Negro group would be much lower than the white. This would tend to accentuate the problem of maintaining a high standard of scholastic attainment."

W(1006) N(1127) I(1100)
"Not only is there a major difference in the average attainments between white and Negro children, there is a radical difference in hereditary and environmental backgrounds. The major percentage of our white people are what could be re-

ferred to as 'country gentlemen' and most have tremendous property holdings with Negroes and Indians serving as tenants and tillers of the soil. It would be in total violation of established tradition for Negroes, Indians and whites to associate on a compatible basis and I, in all sincerity, cannot foresee this barrier being removed wholly or partially within the present life tenure of our people."

W(2774) N(3036)
"Economic, social, educational, and cultural backgrounds make for a tremendous difference."

W(1937) N(928)
"Our achievement tests show about two years difference in achievement. The Negroes are that much lower than whites."

W(3885) N(74)
"Results of standard tests indicate average Negro child is below the average white child in scholastic attainments."

W(9783) N(2305)
"A study of results of achievement tests and mental ability tests indicates a wide difference in ability and achievement between the white and Negro children."

W(8900) N(272)
"At present, yes."

W(6211) N(1837)
"Supt. ..... of ..... got out an interesting study on this in the ..... schools."

W(5928) N(777)
"The Negro, from the fourth grade through the twelfth, will average two years below the white child in the age-grade."

W(4224) N(66)
"I frankly believe that the white children have far greater abilities to progress than Negroes; therefore, this would surely impair progress."

W(3494) N(4163)
"Here is where we would really be criticized for discrimination, for I think that the average Negro eighth grade student would be from one to two years behind the white eighth grade student because of three reasons—(1) native intelligence, (2) poorer teachers, and (3) poorer school attendance on the part of the Negro. I think that we would necessarily have to call upon some impartial organization, such as NEA to test all the children for grade placement."

W(1755) N(1030)
"Standard Tests (mental achievement, readiness, etc.) and supervision clearly show this to be true."

W(2460) N(2597)
"I do not know how to answer—there is not as much difference as the white people think there is."

W(1778) N(619)
"In our administrative unit Negro children are retarded on the average two years as measured by any Standard Test we have given."

W(6465) N(1449)
"The 1950-51 Survey conducted by the North Carolina State Department of Public Instruction in ..... County found a wide difference in educational achievement between white and Negro school children in ..... County."

W(16,038) N(2,354)
"Our tests prove so."

W(2795) N(1111)
"My 'yes' answer does not refer to intellectual capacity when opportunities have been comparable for an extended period of time. However, a sudden or immediate integration would, I think, necessarily lower standards."

W(9983) N(4822)
"This is a major problem far beyond the conception of even

the most extreme Southerner.

(a) The North has attracted the higher bracket in intelligence of Negro citizens.

(b) Negroes who become specialists, college professors, or pass Civil Service, go to centers of Negro and Government jobs. This has left the deep South with the average and below masses. These are, however, the most loyal and dependable American citizens of the race. (Anyone who would think of Washington, D. C. as the place to 'model' the racial integration program is too naive to be taken seriously in the solution of the Negro problem. For many decades all southern communities have been sending their top half (mentally) of the Negro race to Washington for Government jobs. Also, Raleigh, Durham, Greensboro, et cetera, would have a much larger percentage of high I. Q. Negroes than you would find in the typical southern town."

W(1408) N(2212) I(230)

"Five years ago a battery of tests was given to our Negro Supervisor to administer to the fourth and fifth grades. They are still on a shelf in her office. Why didn't she give them? She didn't want a comparison made with tests given to same grades in the white schools. It is my studied opinion, based on observation and checking school papers at random, that the Negro children in ..... County will rate at least 3 grades below the white children on the average. For additional confirmation see statistics from the ..... Schools that can be furnished by Superintendent ....., and the never-released report of the Educational Commission that made studies in several selected counties and cities."

W(3228) N(2515)

"Standard achievement test results in our local elementary schools show white pupils approximately a year above the national norm, while our Negro pupils are approximately two years below the norm. An average variance of three years in a given grade would work an extreme hardship on teachers and pupils alike."

W(4165) N(3107)
"On a grade level of achievement it would mean that approximately 75% of the Negro pupils would be demoted one grade level."

W(6487) N(2276)
"Our Negro Supervisor has expressed the opinion that she feels it would be unfair competition for the Negro children to be in the same classrooms with whites. She based this statement on the fact that the Negroes have only had a relatively short educational history and that their background and opportunities have been more limited. She feels that there are some Negro children who could 'hold their own', but that the group as a whole could not."

W(696) N(157)
"Partially in upper grades."

W(1130) N(811)
"Negro principals in this unit agree that the average Negro school child is from two to five years behind the average white child in the same grade."

W(1139) N(750)
"Negro pupils are an average of two grades below white pupils. This was proved by an achievement test we gave all 6th grade pupils several years ago."

W(2577) N(148)
"In the upper grades, 7 to 12, there is about 2 years difference in achievement of the two races in each grade level."

W(1835) N(None) I(393)
"Enough difference to pose a problem."

W(638) N(721)
"About 1 grade level difference now, but rapidly approaching equal."

W(3388) N(329)
"We have in the past given tests recommended by the State Department on a county-wide basis and have discovered that there is at least a year and one-half to two years difference in the attainment in the same age and grade groups (I admit it has been three years since this comparative study was made). Our people believe that we will in our schools, pull the white child down to the Negro child, rather than bring the colored child to the white child's level. More than likely what would happen is that the Negro child and the white child would probably meet on the level somewhere between the top and the bottom—the white child down a little and the colored child up a little."

W(3250) N(1288)
"I have noticed that black birds do not associate with red birds. They live in the same big world and have the same opportunities. They just like to roost in different trees. The Maker perhaps arranged this. I have observed that the mental capacities of children of the white race are superior."

W(1000) N(675)
"Placement tests will have to be given the children in order to do the right thing for all children. This will mean that a large percentage of Negro children will be placed together even in white schools."

W(2272) N(2638)
"I think that the span of difference is great enough to seriously impair the instructional program."

W(1571) N(2236)
"Observation of work and tests made in white and Negro schools indicates that to classify them for successful teaching would develop such a great social problem that instruction would be greatly hampered."

W(675) N(764)
"Standard tests administered show that there are wide varia-

tions between the groups. While there are variations within the races the 'spread' is magnified."

W(1270) N(1090)
"We gave standard tests last year (1953-54): White I. Q. average, 100. Negro I. Q. average, 80. The whole program of academic work would have to be adjusted downward."

W(1787) N(1585)
"The white pupils usually average about two grades above the Negro pupils according to standard tests when the upper grammar grades are reached."

W(1831) N(235)
"The teachers in the Negro schools and the children of same are both considerably lower in attainment."

W(8661) N(3624)
"Various tests (achievement) administered over the years show a marked difference in attainment between white and Negro children in the same grades."

W(2694) N(1492)
"The average I. Q. score in 1953-54 for the county as a whole was: White, 91.6; Negro, 82.0."

W(4781) N(715)
"Recent achievement tests show that Negro children are below white children here in attainment for each individual grade."

W(1821) N(428)
"But the gap is decreasing."

W(993) N(1062)
"Possibly 20% or 25% of the Negro children would fit into the pattern all right, but for the masses of Negro children they would be misfits. I am sure that an inferiority complex would develop if they were forced to mix with white chil-

dren in their classes. This would result in a serious handicap for the Negro children."

W(3693) N(197)
"Standard tests reveal a difference of a whole year."

W(2571) N(1559)
"Annual testing program conducted for the past several years shows a variation in achievement becoming more pronounced with each successive grade. Average achievement of Negro pupils in the eighth grade is two years, four months below average achievement of white pupils in eighth grade (1953-54)."

W(6631) N(313)
"The colored would be in grades about one year behind the white ones. Mainly because of home conditions, lack of books and newspapers and general conditions."

W(1626) N(533)
"I believe this to be true in this school unit at present. With proper equipment and facilities children of equal mental abilities can obtain equal attainment. As a whole the percentages of mental abilities in the Negro children indicate lower abilities at present in the Negro school than in the white."

W(9335) N(1587)
"Tests show Negro children considerably behind white children in the same grades."

W(3137) N(2210)
"Standard of living of the whites higher than that of the Negroes."

W(6314) N(3521) I(250)
"According to test and other information available there is a noticeable gap between the average attainment of white

pupils and Negro pupils. Therefore, the problem of child placement would become more acute."

W(2409) N(562)
"Very definitely a difference."

W(2342) N(2685)
"The evidence available, which includes the statistical evidence of achievement and other tests, reveals such wide range in achievement of white and Negro pupils as to require extensive class and grade re-organization for instructional purposes, should the races be mixed."

Total enrollment: (3400)
"Negroes low in achievement. Tested this month."

W(2629) N(953)
"Even though we have a number of children in the Negro school who rank favorably with children in white schools because of background and home environment, this would not be true of the average."

W(3330) N(2681)
"In our opinion the average white pupil is a better pupil than the Negro student, by at least a year."

W(8331) N(4023)
"However this might be more easily overcome than other problems."

W(4083) N(2344)
"This is where the real damage would be done to public education in North Carolina."

S

The quotations below are comments made by county and city superintendents of schools in explanation of their an-

swer "Yes" to question number 17 of the questionnaire which reads as follows:

> "Would, in your opinion, white children or their parents elect to attend any school heretofore conducted for Negro children?"

The W, N, or I followed by numerals indicate the white, Negro, or Indian school enrollment of the county and city schools of the superintendent answering the questionnaire.

W(6211) N(1837)
"Very, very few. Some folk here from other sections of the U. S. might let their children do so just to 'make a point'."

T

The quotations below are comments made by county and city superintendents of schools in explanation of their answer "No" to question number 17 of the questionnaire which reads as follows:

> "Would, in your opinion, white children or their parents elect to attend any school heretofore conducted for Negro children?"

The W, N, or I followed by numerals indicate the white, Negro, or Indian school enrollment of the county and city schools of the superintendent answering the questionnaire.

W(2795) N(1111)
"I believe this would be too much of an adjustment to be made immediately."

W(9983) N(4822)
"(a) A few of our preachers, 'do-gooders,' communists, politicians and college professors have indicated that they would do so.
(b) From 90% to 95% of our people would go to any extreme to resist any attempt to do so. .... has a situation that

would require just such a student placement if the court edict is carried out."

W(3228) N(2515)
"It is very unlikely that such a choice would be made."

W(696) N(157)
"There is no likelihood whatsoever that they would either elect or be compelled to attend the present Negro school."

W(1130) N(811)
"Definitely no, in the same manner that they do not want Negro children attending schools previously used by white children."

W(2301) N(1702)
"In this area there might be 10 percent of the parents who would allow their children to attend mixed schools."

W(1051) N(441)
"Nor do we think Negro children would elect to attend the white schools."

W(2256) N(1506)
"White children will not attend Negro schools, law or no law."

W(4427) N(26)
"Question 17 implies an option. If such an option exists in the future, there is no question as to what the people will elect—to retain the *status quo*."

W(2262) N(1835)
"School Board members tell me (we have 9) that we cannot possibly assign white children to our present all-Negro schools."

W(6724) N(1827)
"This matter would be bitterly contested."

W(7118) N(5259)
"If this school were still staffed by Negro principal and teachers and the majority of its students Negroes, I do not believe a white parent will send his child there. I believe he will suffer any penalty of the law rather than do it."

W(1132) N(118)
"In my opinion, not a single white student would attend a school which had been used as a Negro school."

W(1878) N(0)
"This would never work here."

W(17,926) N(7984)
"No one has expressed himself in such a vein."

W(1795) N(194)
"These buildings have generally been located in or near the colored or Negro center of population—and in small communities (some at least) these are outlying areas."

W(3256) N(1455)
"They would not go to the colored building."

W(13,032) N(3557)
"Any parent in this area who would do such would be looked upon as a fanatic, and I am quite sure that he would be."

W(3295) N(1900)
"It will be most difficult for the Board of Education to succeed in getting white children to attend schools heretofore known as Negro schools. If there must be integration, it will be much less difficult to have children of both races attend schools heretofore for white children."

W(2812) N(1868)
"Cannot envision such election."

W(5120) N(1683)
"Definitely NO!"

W(4548) N(916)
"For any white child or parent in our unit to accept this is very doubtful."

W(1006) N(1100) I(1127)
"The consensus of opinion is that the white parents would allow their children to grow up without the benefit of the normal school instructional benefits or send them to private schools if such does come into existence. And many have stated that they would teach their children themselves before they would send them to a Negro school or allow them to attend a white school that has admitted Negroes. The feeling of 95% of our parents would be, whether right or wrong, that it would be an unforgivable disgrace and, thus, will not accept it."

W(1755) N(1030)
"Parents have begun to change their residences."

W(9127) N(257)
"No! Is the answer."

W(2460) N(2597)
"You might have a small minority that could do this but public sentiment would frown on this step by any family in the community."

W(4224) N(66)
"I am certain beyond any doubt of this."

W(2774) N(3036)
"Other observations support the above answer."

W(1937) N(928)
"They are just not going to do it."

W(999) N(1062)
"Customs and habits are not that easily changed."

W(1550) N(107)
"The location of the school in a small all Negro community would negate this problem."

W(8661) N(3624) I(91)
"Most Negro schools have been surrounded by a Negro community."

W(1571) N(2236)
"It would be difficult to keep them in the buildings they are now in if Negro children were allowed to enter."

W(675) N(764)
"Parents object to moving anything from a Negro school to a white school and certainly would react even more to their children attending the Negro school."

W(2272) N(2638)
"It could only be done by extreme force."

W(3250) N(1288)
"The white people refuse to use school books which have been used by the Negroes. They refuse to ride busses which have been used by the Negroes. They cannot stand the scent. Pharoah's army could not make them enter a school building which has been used by the Negroes."

W(3388) N(329)
"Our one Negro school building is average so far as comfort, equipment and all those working tools that go to make up a good school. Practically all of the children that would use the Negro school plant would have to be transported, since it lies a mile and one-fourth outside of the ..... school district, the town of ..... and the ..... white school plant. This building could probably be integrated into the ..... school facilities as a grammar grade unit, since we have enough children in the .... school to fill all classrooms in the Negro school by simply moving four sixth grades, four seventh grades and four eighth grades to this building. As

for white parents selecting a school in which there were Negro children, that is entirely out of the question."

W(6468) N(4337)
"They would not attend such schools even if it meant no schools at all for their children."

W(13,996) N(1604)
"Not for the first few years."

W(7175) N(6916)
"Not at this time, though some of our buildings for Negro children are better than for whites in some districts."

W(11,458) N(4441)
"Not now."

W(6631) N(313)
"No matter how adequate and if equal in all respects to the white ones, it would be next to impossible to get them to go."

W(1926) N(533)
"They would go only after a complete renovation of the plant."

W(5347) N(2210)
"I think this is a recognized fact."

W(6314) N(3521) I(250)
"Many schools heretofore used for Negro children will not be used for white people in our area."

W(2409) N(562)
"By no means."

W(3330) N(2681)
"They just wouldn't go!"

W(8331) N(4023)
"There would be some for sake of novelty."

U

The quotations below are comments made by county and city superintendents of schools in explanation of their answer "No" to question number 18 of the questionnaire, which reads as follows:

> "In the event that the Supreme Court should decree that there should be a gradual adjustment brought about from the existing segregated system of public schools to a system not based on color distinction, and provided that sufficient length of time were allowed for such gradual adjustment, would the schools of your unit be better able to cope with the problems presented by such a decision?"

The W, N, or I followed by numerals indicate the white, Negro, or Indian school enrollment of the county and city schools of the superintendent answering the questionnaire.

W(1550) N(107)
"Our action should follow the State pattern. If the action is inevitable I do not believe that prolonging it will help. We are in the process of building and the present uncertainty is complicating our problem."

W(4194) N(3378)
"It is my opinion that it would be better to operate just as we are now with separate schools for white and Negro students. That is the opinion of the principals of our three consolidated Negro schools."

W(5417) N(766)
"I shudder when I think of what may and probably will happen when the Supreme Court hands down its decree implementing its previous decision with reference to segregation in public schools."

W(257I) N(1559)
"We do not think that integration would be for the best interest of either white pupils or Negro. Gradual integration

merely introduces the element of time and we do not believe that time will correct a basic mistake. The people may finally accept integration on a gradual basis, but it is our opinion that the distaste for and resentment of such action will not disappear."

(Total 3400)
"Perhaps 15 to 20 years from now."

W(2342) N(2685)
"The proportion of Negroes to whites is such that even gradual adjustment would be fraught with serious resistance and resultant interruption of the school program. I have no reason to believe that gradualism would be any more acceptable than immediate integration."

W(8112) N(2177)
"The answer can only be 'perhaps'."

W(2774) N(3036)
"Of course gradual adjustment would be better than a sudden attempt, but any movement toward adjustment will produce tremendous difficulties in our county."

W(3919) N(2223)
"See no way of implementing the decision."

W(3669)
"Gradual adjustment could hardly apply in our case. What would be considered the first step in gradual adjustment elsewhere, would be total in our case."

W(420) N(333)
"We would have serious problems even if a gradual adjustment should be decreed."

W(1795) N(194)
"It is quite obvious, it seems, that this question is the one with the 'Stinger.' I do not think it has a place in this list—

as only one answer is possible and if that is given—and used in your summary—you can quite truthfully say: 'According to our summary, it is agreed that the gradual adjustment is acceptable'—which I think, is misleading and untrue."

W(1006) N(1127) I(1100)
"It depends on the interpretation of the word gradual. If it means that other communities enter into the situation successfully and many years elapse, it might work; however, I honestly, and with all sincerity, doubt if it will ever be workable. I believe it reasonable to state that it will never be workable until there has been a total change in local attitude, and we all know how slowly deep-seated prejudices (whether right or wrong) are modified. Our total picture is that we are facing one of the most destructive decisions ever thrust upon the American people, even greater than were the problems of emancipation."

V

The quotations below are comments made by county and city superintendents of schools in explanation of their answer "Yes" to question number 18 of the questionnaire, which reads as follows:

> "In the event that the Supreme Court should decree that there should be a *gradual* adjustment brought about from the existing segregated system of public schools to a system not based on color distinction, and provided that sufficient length of time were allowed for such gradual adjustment, would the schools of your unit be better able to cope with the problems presented by such a decision?"

The W, N, or I followed by numerals indicate the white, Negro, or Indian school enrollment of the county and city schools of the superintendent answering the questionnaire

W(9619) N(7122)
"A *gradual* adjustment would certainly help school systems to make the transition from segregated to non-segregated

schools. It is going to be a difficult job at best. If on top of all the other problems of adjustment which will have to be met, Negro children were thrown in great numbers into the white schools, there would be chaos, as the Negro boys and girls, with very few exceptions, simply cannot do the same quality of work. This would mean that many of these children would fail to pass their work, not because of their color, but for lack of intellectual ability, or background of experience, or both, to do the required classroom work. The Negro parents would then be inclined to accuse the schools of discriminating against them which would not be true in these instances. (The distinguished gentlemen of our Supreme Court, because their experience has had to do with legal matters and not in the area of public education, were naturally not keenly aware of this difference in the general ability and achievement of the two groups.)"

W(3281) N(811)
"This is the only way it will work here."

W(2373) N(4419)
"The 'gradual' would help to adjust the difference in attainments."

W(3534) N(646)
"Provided a separate school to accommodate any colored and white children who might be led to integrate were provided on a trial basis."

W(1523) N(1455)
"We believe only a few Negroes would attempt to enter the schools normally serving the white race. If all schools were open to either white or Negro children, we believe there would be little change in this unit."

W(5074) N(1287)
"Only way out—minimum of 15 years."

W(1764) N(859)
"In my opinion, the Negroes in our school administrative

unit are satisfied with their separate school."

W(1490) N(1784)
"I think it would be many years before any appreciable number of Negro students would actually seek admittance to white schools here."

W(2301) N(1702)
"As I said above, 25 years is the minimum time it would take to carry out the integrated program."

W(2262) N(1835)
"This method is the only possible way that I can see for our schools here. Any other plan of integration will, in my opinion, wreck the public schools in our administrative unit."

W(6724) N(1827)
"There is a tendency toward integration. For example, the ministers of our city only this month combined the work of white and Negro ministers in the association of ministers. Because of the good schools which now exist for Negroes, the educational level of the Negro is rapidly going up. It will be much easier to mix white and colored children 10 or 20 years from now than it will be at the present time."

W(5120) N(1683)
"It all depends upon what is meant by 'sufficient length of time.' In my opinion, 100 years would be too short."

W(2117) N(1172)
"Providing the time allowed is sufficient. A year or two would make little difference. On the other hand, if equal facilities are provided over a ten to twenty year period the progress made by Negro schools will appreciably improve the situation. Many people oppose integration just as bitterly on the basis of the low standards that would come about as they do on the basis of racial differences."

W(1878)
"I would not be afraid of a *gradual* adjustment at the high school level."

W(2603) N(7753)
"It is my opinion that it would be most difficult to ever make the adjustment to non-segregated schools. I do believe a sufficient length of time would help to alleviate some of the problems."

W(17,926) N(7984)
"We are making progress. Our principals and supervisors meet together. Small groups of both races meet together in professional meetings and in workshops. Even pupils from both races are cooperating in some areas."

W(3256) N(1455)
"What is a gradual adjustment???? (Number of years??)"

W(13,032) N(3557)
"We are not ready for gradual adjustment to begin at once. Most of our white people are of this opinion. I have talked to many Negro leaders of this county, including teachers and principals. Some of them think that they would be ready to begin integration in about 20 years if they continue to make progress. Before the Negroes of this county will demand integration there will have to be a great deal of agitation from the outside. Apparently that is coming at a rapid rate, from far and near. The agitators that are near are few, but get support from a few, some of whom represent large groups and seem to speak for them, without authority."

W(2398) N(875)
"This is my hope! The first ten years will be the hardest!"

W(3295) N(1900)
"If the leaders of both races can agree on a gradual adjustment, and if our people are not disturbed by outside agitators, the problem will be facilitated."

W(5784) N(5991)
"Funds are not in sight now to build all the facilities needed for our present enrollment. If funds were made available by 1960, we will need five years to build the space needed. No kind of integration can be considered before 1965."

W(6253) N(50)
"Time will help."

W(6940) N(1862)
"I think so."

W(7118) N(5259)
"Obviously we would be better able under these circumstances, but I do not know how well we could cope with the pupils that would be aroused by even a gradual attempt at integration."

W(4548) N(916)
"'Time' will not make integration more acceptable or desirable, but may help in adjustment."

W(2297) N(397)
"The length of time could not be too short. The situation would still be difficult."

W(2460) N(2597)
"If you mean by gradual adjustment another generation something might be done."

W(3494) N(4163)
"I think that if it has got to come that the shock would be less severe if it came gradually. It is my opinion that it would be best to start at the 12th grade. Here you would have a more select group of Negroes. There would be less opportunity because of the short time that children would be together for them to mingle and form friendships that might disturb the parents. At this age, too, you would find the children of

both races when they are most tolerant. My nose tells me that the odor is less nauseating as the Negro children advance in the grades."

W(2774) N(3036)
"Of course, gradual adjustment would be better than a sudden attempt, but any movement toward adjustment will produce tremendous difficulties in our county."

W(1937) N(928)
"If integration should start with the first grade only and the children grew up together, there would be less trouble than otherwise."

W(3885) N(74)
"The general opinion in this community seems to be that gradual adjustment is the only sensible solution."

W(1826) N(1190)
"It will not work otherwise."

W(1987) N(1303)
"If enough time is permitted. We need 25 years."

W(6211) N(1837)
"Naturally, I assume that our schools would fall into line with the general 'State pattern' which might be established. 95 per cent of our people feel that the Supreme Court made a Great Mistake in their May 17 decision."

W(1755) N(1030)
"A doubtful situation."

W(552) N(371)
"Where to begin, is the '64 dollar question.' Our white people in this county will not tolerate at any grade level, manner, or time, integration of white and Negro children."
"Until white and Negro adults can live together, as the white and Negro children would have to under the integration

plan, I see no hope of public schools integrating peacefully."

W(2651) N(344)
"Even with gradual adjustment we have every reason to believe that we will be confronted with serious problems—and as to these problems, I see no reasonable solution at the present time."

W(2905) N(798)
"The gradual transition should be completed 1959-60, beginning with primary grades extending through elementary next two years. First year high school by 1958-59. Complete integration by 1959-60."

W(2577) N(148)
"If left to their own choice, neither race in ..... will want to go to school with the other race for years to come."

W(1139) N(756)
"I honestly think that it will be a long time before the white people of this community will agree to any integration."

W(6487) N(2276)
"This opinion is based on observation of some Negro and white children playing together before their prejudice has had a chance to develop."

W(1408) N(2212) I(230)
"But they would have to have an awfully long time."

W(3901) N(777)
"Gradual adjustment would require a very long time. Forced adjustment will not succeed."

W(2242) N(5125)
"This decision would cause or establish another segregated group. The white financially able to send or establish white or private schools would do so, causing the lower group economically to be forced to integration. This would establish

three groups which would cause our section of the country to be divided three ways socially and economically. This would cause people with wealth not to be interested in public education and make it difficult to secure funds to operate our schools. Therefore, I believe that the states and counties should operate, support and control their school system."

W(2795) N(1111)
"Prejudices are acquired, I think; not inherited. A change as radical as has been proposed should by all means be a gradual one if made at all. I believe a gradual pupil integration might be made within a reasonable length of time. I am not so certain about teacher integration even then."

W(9983) N(4822)
"As soon as the citizens see that the communist propaganda as to the equality of the races is false, the reaction will be violent. Too many college pink and red professors, imported socialist writers, and 'do-gooders' religious dreamers have brain-washed our citizens to the point that at first a minority would accept the program. When the true situation becomes apparent, there will be a violent reaction. The testing programs for several decades proves the propaganda false."

W(3228) N(2515)
"It would probably require several decades."

W(693) N(157)
"Any approach other than a gradual approach would be fool-hardy and would show that the honorable gentlemen on the Court did not realize the depth of feeling on this matter."

W(1130) N(811)
"Such a period of gradual adjustment should cover not less than 25 years if it is to be gradual enough. This may not be long enough."

W(4164) N(3107)
"If 'gradual' is interpreted to mean 10 to 25 years—Answer—Yes."

W(1787) N(1575)
"Integration will have a better chance to succeed if it is done gradually. It cannot be done peacefully if done in a hurry. It may not be possible to do it peacefully even if done in a gradual manner."

W(3250) N(1288)
"We are getting along fine with the schools as they are in this county. The Negroes do not want to attend the white schools. They seem to want more prestige. If we can get good facilities for all and are allowed to work out a long range plan, we could better get along and live in some degree of peace; otherwise, there will be no peace. We have this situation: Many Negroes now living in the North are sending their children back to the South for school. Three cases or more like this in one of our schools."

W(6468) N(4337)
"This should be at a 'snail's' pace if it has to come at all. Our people are not ready for it and many of them will have no part of it."

W(3388) N(329)
"This is the only way that it might be accomplished in ..... County. A little at a time. One grade this year and another grade next year. I would suggest that not less than 10 years be given to us in order to bring about compete integration."

W(2272) N(2638)
"This type of integration would cause lots of trouble but it would be better than an attempt of immediate integration."

W(675) N(764)
" 'Sufficient length of time' can be a long time. Just as death postponed is better than death now, so integration postponed

is better than integration now. At the moment it appears that integration will not be welcome in the foreseeable future."

W(1571) N(2236)
"Would probably be less people involved at one time but we will have troube in ..... County with any plan to desegregate schools. Much hatred and bitterness will be generated that never existed previously."

W(8661) N(3624) I(91)
"Any extreme change in a social order must be accomplished over a long period of time."

W(999) N(1062)
"Our schools will follow both by choice and by necessity a State pattern. We are part of a State School System and we have no desire to combat the State's policy. I am confident, after serving as school superintendent in ..... for thirty-one years, that even the State cannot wipe out segregation at one fell swoop without seriously impairing the public school system. If non-segregation every comes in North Carolina it will have to be by degress and it will require a long time."

W(3738) N(None)
"It is my opinion that should such be made the law of the land, people would gradually grow to accept it for most people feel that it is morally right to do so but have strong prejudices to overcome in seeing such put into actuality."

W(1835) N(None) I(393)
"We need a terribly long period and I don't believe our people will go along with the integrated schools for many, many years, willingly."

W(1000) N(675)
"Integration beginning with the first grade will greatly lessen the trouble we are all bound to have with this thing."

W(1270) N(1090)
"This cannot be peacefully and successfully done until the people change. At present the majority of both races are against mixing. I have no idea how long 'gradual' means. It must mean when the people change and are willing to accept integration."

W(2694) N(1492)
"The process would have to be very gradual for it to be accepted at all."

W(1831) N(235)
"We yield to the affirmative as to its comparative implication and not as to, in any measure, conceding to sanction."

W(2409) N(562)
"By all means."

W(2629) N(953)
"If enough time were given sufficient preparation could be made in schools of both races for the change. It is my opinion that with a sufficient amount of careful preparation and training on the part of teachers, children, parents, and the public, integration could be accomplished."

W(3330) N(2681)
"Time makes a difference in solving any problem. I suppose a grade at a time would be best."

W(766) N(891)
"This seems to be the only way out."

W(13,996) N(1604)
"Start in the first grades in a few schools (those from whom we could get an approval of the School Committee and P.T.A. leadership). It will take ten or twelve years to get it started in all the schools in our county."

W(14,452) N(2475)
"In my opinion, this is the only plan which offers hope of a tolerable solution of the problem."

W(7175) N(6916)
"Fifteen or twenty years ago talk of voting by Negroes was considered, 'political heresy' by whites in this area. It is now accepted by change in public opinion."

W(8669) N(644)
"Our people are becoming more tolerant and if given time will work it out."

W(6631) N(313)
"Even then it will take many years. No law can be enforced when public sentiment is opposed to it."

W(1926) N(533)
"To accomplish any change it is necessary to educate the public to the change. An abrupt change of this type can only cause friction until the whites and Negroes are educated for it."

W(3137) N(2210)
"To what degree, I do not know."

W(6314) N(3521) I(250)
"If the Supreme Court should decree that each county or each community be given the opportunity to choose their own school, I do not believe that any racial problems will arise in our unit. Our Negroes and whites are interested in equal but separate facilities. If this desire is met, I believe generally our system will continue to operate without problems."

W(8331) N(4023)
"Much time is needed for children and parents to prepare for integration (at least 10 years)."

EXHIBIT 8

LETTER OF TRANSMITTAL AND QUESTIONNAIRE TO SHERIFFS AND CHIEFS OF POLICE, WITH TABULATION OF ANSWERS TO QUESTIONS 1 THROUGH 10, INCLUSIVE.

STATE OF NORTH CAROLINA
DEPARTMENT OF JUSTICE
RALEIGH

5 October 1954

To the Sheriffs and Chiefs of Police of North Carolina:

In the re-argument of the school segregation cases in the Supreme Court of the United States, which is scheduled to begin December 6, the Court has requested the answers to two questions which they have submitted, the first relating to the immediate mixing of the races in the public schools and the other to a gradual integration of these schools.

There is enclosed to you herewith two copies of the questionnaire which I am sending to the sheriffs throughout the State and chiefs of police in the larger cities. I will appreciate it if you will answer the questions contained in this questionnaire and return it to me by October 12 if possible. You may retain one copy for your file. Your candid answers to these questions will be of great assistance to me in presenting North Carolina's case to the Supreme Court.

No publication will be made of the answer given by the various sheriffs and chiefs of police to these questions. Only the results will be shown in tabulated form in our brief presented to the Supreme Court. I suggest that no publicity be given to this matter.

Yours very truly,
s/ Harry McMullan
HARRY McMULLAN
Attorney General

Enclosures

QUESTIONS FOR SHERIFFS AND CHIEFS OF POLICE

1. Name of county or city: .....
2. How long have you been engaged in police work? .....

In all of the following questions, assume all white and Negro children are to be assigned to schools nearest their homes without regard to race.

1. Do you think there would be likelihood of violence among racial groups of students which would seriously interfere with the operations of schools in your city or county?
   (Answer "Yes" or "No.") Yes—193 No—6 D.K.—1
   Make such explanation of your answer as you care to make.
2. Do you think there would be likelihood of such violence involving parents and others who are not students?
   (Answer "Yes" or "No.") Yes—191 No—6 D.K.—3
   Make such explanation of your answer as you care to make.
3. Do you think there would be danger of such violence on school busses or where children wait for busses?
   (Answer "Yes" or "No.") Yes—195 No—3 D.K.—2
   Make such explanation of your answer as you care to make.
4. Do you consider your present police force sufficient to preserve the general peace and order in your jurisdiction if such intermixing of white and Negro children in the public schools were to occur?
   (Answer "Yes" or "No.") Yes—14 No—182 D.K.—3
   Make such explanation of your answer as you care to make.
5. In your opinion, generally, would parents of white children permit them to attend a school in which a substantial number of the students are Negroes?
   (Answer "Yes" or "No.") Yes—4 No—189 D.K.—7
   Make such explanation of your answer as you care to make.
6. In your opinion, would racial conflicts result if white children are disciplined by Negro teachers?
   (Answer "Yes" or "No.") Yes—197 No—2 D.K.—1

Make such explanation of your answer as you care to make.

7. In your opinion, generally, would parents of Negro children permit them to attend a school in which a substantial number of the students are white?
(Answer "Yes" or "No.") Yes—111 No—71 D.K.—17
Make such explanation of your answer as you care to make.

8. In your opinion, would racial conflicts result if Negro children are disciplined by white teachers?
(Answer "Yes" or "No.") Yes—147 No—41 D.K.—7
Make such explanation of your answer as you care to make.

9. In your opinion, would the mixing of the races in the public schools cause such conflicts as to increase the danger of malicious destruction to school property, such as the burning of school buildings or school busses?
(Answer "Yes" or "No.") Yes—173 No—17 D.K.—8
Make such explanation of your answer as you care to make.

10. If the mixing of the races in public schools were brought about by a gradual process, according to plans of integration considered feasible by local school authorities, in your opinion would the danger of violence in racial clashes be reduced or eliminated?
(Answer "Yes" or "No.") Yes—74 No—108 D.K.—17

11. As the result of your observation and conversations which you have had with citizens of your county or city, do you find the attitude of the majority to be:

	White	*Negro*
For Segregation	.....	.....
For Non-segregation	.....	.....
Indifferent	.....	.....

(Note: The answers to this question were in such form as to prevent tabulation. Every officer replying indicated that the majority of the people in his jurisdiction favor segregation.)

By: .....

October ..... 1954.

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Supreme Court of the United States

OCTOBER, 1954, TERM

OLIVER BROWN, ET AL.,
Appellants,
VERSUS
BOARD OF EDUCATION OF TOPEKA, SHAWNEE COUNTY, KANSAS ET AL. — **No. 1**

HARRY BRIGGS, JR., ET AL.,
Appellants,
VERSUS
R. W. ELLIOTT, ET AL., — **No. 2**

DOROTHY E. DAVIS, ET AL.,
Appellants,
VERSUS
COUNTY SCHOOL BOARD OF PRINCE EDWARD COUNTY, VIRGINIA, ET AL., — **No. 3**

FRANCIS B. GEBHART ET AL.,
Petitioners,
VERSUS
ETHEL LOUISE BELTON, ET AL., — **No. 5**

BRIEF OF MAC Q. WILLIAMSON, ATTORNEY GENERAL OF OKLAHOMA, AMICUS CURIAE

MAC Q. WILLIAMSON,
Attorney General of Oklahoma,
Oklahoma City, Oklahoma,
Amicus Curiae.

NOVEMBER, 1954.

KING LAW BRIEF CO., 222 N.W. THIRD, OKLAHOMA CITY — PHONE FO 5-2969

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Supreme Court of the United States

OCTOBER, 1954, TERM

OLIVER BROWN, ET AL., *Appellants,* VERSUS BOARD OF EDUCATION OF TOPEKA, SHAWNEE COUNTY, KANSAS ET AL.	**No. 1**
HARRY BRIGGS, JR., ET AL., *Appellants,* VERSUS R. W. ELLIOTT, ET AL.,	**No. 2**
DOROTHY E. DAVIS, ET AL., *Appellants,* VERSUS COUNTY SCHOOL BOARD OF PRINCE EDWARD COUNTY, VIRGINIA, ET AL.,	**No. 3**
FRANCIS B. GEBHART ET AL., *Petitioners,* VERSUS ETHEL LOUISE BELTON, ET AL.,	**No. 5**

BRIEF OF MAC Q. WILLIAMSON, ATTORNEY GENERAL OF OKLAHOMA, AMICUS CURIAE

AUTHORITY

Authority for the filing of this *Amicus Curiae* brief may be found in the concluding paragraph of this Court's opinion in the cases (as consolidated) above listed. 347 U. S. 483, 98 L. ed. (advance) p. 583. See, also, Par. 4 of Rule 42 of this Court.

The State of Oklahoma is one of the states requiring segregation in public education; and principally because of both constitutional and legislative restrictions as to the financing of separate educational facilities for white and negro children, it is probably more immediately concerned than some, if not all, of the other states having segregation in public education in whether this Court directs that existing segregated systems be stopped immediately, or adjusted gradually to a procedure not based upon color distinctions.

At the outset, it may be noted that Oklahoma's dual system of tax-gathering is unique and different from most other "segregation" States.

Basically—as will hereinafter be pointed out—our Oklahoma district or "majority" schools (which are usually but not always for white children, because of the numerical preponderance of white children in such school districts) are financed by a school-district-wide ad valorem tax levy, whereas separate schools, (which are usually but not always for negro children, because of the

smaller number of negro children) are financed by a county-wide ad valorem tax levy. These levies—the first, to be administered by school district officers, while the second, or separate school funds, are expended by county officers—are supplemented by State excise taxes, etc., and by State appropriations, all of which are presently geared to the segregated or double system of education, as are the ad valorem tax levies for "majority" as well as "separate" schools. The income and revenues allocated for both systems are (usually) barely sufficient to provide appropriate and desirable educational facilities, separately functioning, for all children (of both the white and colored races).

So that if the method of financing and allocating revenues for the education of one race must *now* be used for the education of both races (which apparently will be the case, since the doctrine of "separate but equal" has been determined by this Court to have no place in the field of education), then our entire fiscal program with its "two-pronged" methods of raising and dividing tax moneys (1) on a district-wide basis—as to the majority schools; and (2) on a county-wide basis—as to our separate schools, must needs be recast by Constitutional change, and by our next Legislature (which meets in regular session January 3, 1955).

This Court's determination that the doctrine of "separate but equal" has no place in the field of scholas-

tic education quite apparently means that there can be only one system of public education available to negro and white children alike; and since, in each of these cases, children of the negro race were seeking admission to schools attended by white children, it is logical to assume that, as far as the State of Oklahoma is concerned, negro children are intended to be admitted to and integrated in the district schools(usually but not always for white children) and that separate schools (usually but not always for negro children) can no longer be maintained by the State, as such. Thus it appears that separate schools for white and for negro children, based on color distinctions, must be discontinued: it having been said by the Court in these cases that "separate educational facilities are inherently unequal"; which (among other things) indicates that separate schools (and the finances therefor) in Oklahoma are contrary to the Fourteenth Amendment to the United States Constitution, and are unlawful.

In this connection, it is pointed out that all budgets for both majority and separate schools for the current Oklahoma fiscal year (1954-55) have long since been officially approved, and tax levies made and extended upon the tax-rolls of each of our 77 counties; and such taxes are now payable, and in process of collection—the first half of all said taxes actually becoming delinquent on December 31, 1954. Thus the fiscal program for all

schools on the traditional and divided basis is so far along that it would be a clear impossibility to try at this time to "unscramble" the set purposes and destination of tax moneys of our 77 counties for this year, when and as collected.

Another point to consider is the fact that hundreds of thousands of dollars are being collected—under State constitutional authority—for *separate* school purposes, *with each county—rather than each school district—as a taxing unit;* and if the decision should be—under the Court's Question 4—"integration forthwith," then every dollar so collected (and being held by the various County Treasurers) would remain "locked up" and entirely unavailable for *any* school purposes until new and different constitutional and statutory remedies could be provided; this, for the reason that Sec. 19, Article 10, Oklahoma Constitution, forbids the diverting of any tax moneys away from the original purposes of the levy.

Said Section and Article provide as follows:

> "19. SPECIFICATION OF PURPOSE OF TAX—DEVOTION TO ANOTHER PURPOSE.—Every act enacted by the Legislature, and every ordinance and resolution passed by any county, city, town, or municipal board or local legislative body, levying a tax shall specify distinctly the purpose for which said tax is levied and no tax levied and collected for one purpose shall ever be devoted to another purpose."

Thus, while necessary remedial legislation can (and doubtless will) be provided by or before June 30, 1955

(the end of the current fiscal year), yet it will reasonably take that long to make the change-over.

Each Oklahoma school district, depending—as it now the case—for its very existence upon revenues allocated to it for education of children of only one race, will thus find it presently impossible to provide funds for adequate education for children of both races, unless and until the Legislature of the State of Oklahoma and the people of the State of Oklahoma have had an opportunity—through amendatory legislation—to give increased revenues to such school districts; which might (and probably will) consist largely of new Acts consolidating revenues formerly allocated for both district and separate schools.

The problem confronting the State of Oklahoma in changing from the heretofore approved "separate but equal" system (which has prevailed since before Statehood, in 1907) can better be understood by a consideration of provisions (hereafter quoted) of the Constitution of Oklahoma and statutes enacted by the Legislature of the State of Oklahoma.

For the purposes of this brief, references to statutes of the State of Oklahoma will be by title and section in Oklahoma Statutes, 1951, as follows:

"..... Oklahoma Statutes 1951,
(Title number)
Sec. ....."
(Section number of title)

Section 5, Article I, Oklahoma Constitution, reads as follows:

> "Provisions shall be made for the establishment and maintenance of a system of public schools, which shall be open to all the children of the State and free from sectarian control; and said schools shall always be conducted in English: Provided, that nothing herein shall preclude the teaching of other languages in said public schools: And *Provided, further, that this shall not be construed to prevent the establishment and maintenance of separate schools for white and colored children*" (Emphasis ours).

Section 3, Article XIII, Oklahoma Constitution, reads as follows:

> "Separate schools for white and colored children with like accommodation shall be provided by the Legislature and impartially maintained. The term 'colored children,' as used in this section, shall be construed to mean children of African descent. The term 'white children' shall include all other children."

Section 11 of Article 23, Oklahoma Constitution, reads as follows:

> "Wherever in this Constitution and laws of this State, the word or words, 'colored' or 'colored race,' 'negro' or 'negro race,' are used, the same shall be construed to mean or apply to all persons of African descent. The term 'white race' shall include all other persons."

70 Oklahoma Statutes 1951, Sec. 5-1 provides that the public schools in Oklahoma "shall be organized and maintained *upon a complete plan of separation* between the white and colored races with impartial facilities for

both races." Other statutes prescribe penalties for teaching pupils of the colored and white races in the same school. 70 Oklahoma Statutes 1951, Secs. 5-4 *et seq.* However, since this Court has already held that segregation of white and colored children in public education is in contravention of the United States Constitution, this Court will not be burdened with any argument herein as to the meaning of the aforecited constitutional and statutory provisions which for many years have been in effect in Oklahoma.

The question of immediate concern to the State of Oklahoma is an adjustment to a single system of public education, which is to be considered by this Court in resolving Questions 4 and 5 that have been previously propounded by the Court. Therefore, it is deemed appropriate to present for this Court's consideration these further constitutional provisions, constituting—as they do—the basic authority for county-unit taxation for separate school purposes, only.

Section 9 of Article 10, Oklahoma Constitution, reads as follows:

> "Except as herein otherwise provided, the total taxes for all purposes, on an ad valorem basis, shall not exceed, in any taxable year, fifteen (15) mills on the dollar, to be apportioned between county, city, town and school district, by the County Excise Board, until such time as the regular apportionment is otherwise provided for by the Legislature.
>
> "No ad valorem tax shall be levied for State purposes, nor shall any part of the proceeds of any ad

valorem tax levy upon any kind of property in this State be used for State purposes: *provided, however, any County of the State may make an additional ad valorem levy, not exceeding two (2) mills on the dollar valuation, on any property within the county, for separate schools for white and negro children, such aid or money raised therefor to be apportioned as provided by law; provided, further, that upon certification of the need therefor by the governing board, an additional levy of not to exceed one (1) mill on the dollar valuation on any property within the county shall be made by the County Excise Board for separate schools for white and negro children: provided, further, that upon certification of the need therefor by the governing board, an additional levy of not to exceed one (1) mill on the dollar valuation on any property within the county shall be levied by the excise board, the proceeds derived therefrom to be used exclusively for the acquisition of sites and erection of buildings for separate schools for white and negro children;* provided, further, the annual ad valorem tax rate for school purposes may be increased, in any school district, by an amount not to exceed fifteen (15) mills on the dollar valuation, upon all property in the district, on condition that a majority of the qualified voters of such district voting at an election, vote for such increase, provided, however, that the Legislature shall by proper laws prescribe the manner and method of conducting said election, but until such legislative provision is made, said levy may be made and said election held as now provided by law; and provided further, that limitations on the levy of such additional 15-mill levy may be made hereafter by the Legislature.

"Provided, also, an additional levy may be made each year, in the State and in the various subdivisions thereof, on all personal and real property subject to ad valorem taxes, to reasonably take care of

> bonded and other valid indebtedness of the State and its various subdivisions existing at the time this amendment is adopted and becomes effective, but such necessary additional levy or assessment on such property to take care of such indebtedness existing and owing by the State and its subdivisions at such time shall in no event exceed levy or assessment for which such property would have been liable under the Constitution and laws of the State as same existed immediately prior to the adoption of this amendment. No provision hereof shall be construed to tax churches or schools."—As amended State Question No. 185, Referendum Petition No. 61, Adopted August 15, 1933; State Question No. 319, Referendum Petition No. 91. Adopted special election July 2, 1946; State Question No. 314, Initiative Petition No. 224. Adopted general election Nov. 5, 1946; State Question No. 316, Initiative Petition No. 226. Adopted general election Nov. 5, 1946; State Question No. 327, Referendum Petition No. 92. Adopted special election July 6, 1948.

It will thus be seen that definite limitations are placed upon ad valorem tax levies for school districts (which are maintained for the "majority" race, which usually means the white race), and for separate schools (which ordinarily means the "minority" or the negro race); and it will also be observed that the *tax levies for majority school districts are invariably on a district-wide basis*, whereas levies for the separate schools *are and always have been on a county-wide basis* (Emphasis ours).

70 Oklahoma Statutes 1951, Sec. 5-8, prescribes the procedure to be followed in levying taxes for the

maintenance of "county separate schools for white and colored children."

While children of both races may be integrated into the school district system, as distinguished from the county separate school system, in the State of Oklahoma, the aforementioned limitations as to financing must be faced and solved, primarily by the people, and as well, by the Legislature, of the State of Oklahoma, since the principal source of revenue for schools is an ad valorem tax levy, which has a definite limitation by the terms of the Constitution, as aforementioned. This means, of course, that appropriate or adequate facilities for public education cannot be given to both white and colored children under a newly-created and required system of non-racial education until a plan for removing or raising the constitutional limitation on ad valorem tax levies has been devised and submitted to the electorate of the State of Oklahoma.

In this connection, it might be pointed out that the State Legislative Council in Oklahoma (which consists of the entire current membership of both Houses, and which functions between regular legislative sessions) has been making a study of this question and is in the process of submitting its recommendations to the Oklahoma Legislature when it convenes in regular session in January, 1955. Probably the recommendations so made will require, and certainly will be entitled to, debate in both

houses of the Oklahoma Legislature; it being necessary to formulate a permanent solution, by way of constitutional amendment, of the future financing of a single system of public education which will include and integrate both white and colored children. Such proposed constitutional amendments will be by the Legislature submitted to the voting citizens of the State. Likewise, it will be necessary for the Oklahoma Legislature, itself, to formulate a system to supplement, by excise taxes, etc., revenues that will be made available from ad valorem tax levies, for the newly arranged school program.

It seems to be settled law that this Court, having once begun an exercise of its equity powers in injunction proceedings, can properly continue its control over the subject matter of the cases, so as to do "entire justice" with respect to such subject matter, which means that this Court has the power—and we think, the corresponding duty—to retain jurisdiction, as long as might reasonably be necessary, to effect entire and complete justice not only to the parties in these cases, but to all others who will be affected by the decision of this Court.

(U. S. Va. 1830) The process of an equity court should act on known and definite interests and not on such as admit of no medium of estimation, and its decrees should terminate and not instigate litigation.—*Caldwell* v. *Taggart*, 29 U. S. 190; 4 Pet. 190; 7 L. Ed. 828.

(U. S. Va. 1937) Extent to which equity will go to give relief where there is no adequate remedy at law is not a matter of fixed rule, but rests in sound discretion of court * * * Equity courts may go much farther both to give and withhold relief in furtherance of public interest than they are accustomed to go where only private interests are involved.—*Virginian Ry. Co.* v. *System Federation No. 40*, 57 S. Ct. 592; 300 U. S. 515; 81 L. Ed. 789; affirming CCA, 84 F. 2d 641; affirming D.C. *Ry. Employees Dept. of A.F.L.* v. *Virginian Ry. Co.*, 11 F. Supp. 621; certiorari granted *Virginian Ry. Co.* v. *System Fed. No. 40, Ry. Employees Dept. of A.F.L.*, 57 S. Ct. 43, 299 U. S. 529; 81 L. Ed. 389. Also, see *Scripps-Howard Radio* v. *Federal Communications Comm.*, 62 S. Ct. 875; 316 U. S. 4; 86 L. Ed. 1229. *Mercold Corp.* v. *Mid-Continent Inv. Co.*, 64 S. Ct. 268; 320 U. S. 661; 88 L. Ed. 376;—Rehearing denied—64 S. Ct. 325; 321 U. S. 802; 88 L. Ed. 1089 (also see 89 L. Ed. 546—motion denied).

(U. S. Miss. 1874) It is a rule of a court of equity to do complete justice when such is practicable, not merely by declaring the right, but by enforcing a remedy for its enjoyment, and such a court does not turn the party to another forum to enforce a right which it has itself established.—*Terrell* v. *Allison*, 88 U. S. 289; 21 Wall. 289; 22 L. Ed. 634.

We believe certain generalized rules to be apropos. 30 C. J. S., Equity, Sec. 67, states:

"The aim of a court of equity is to administer complete relief in a single suit and, as a general rule, the court will in the one suit investigate and determine all questions incidental to the main controversy and grant all relief incidental to accomplishment of the principal object of the bill, and it is a well settled rule that a court of equity which has obtained jurisdiction of a controversy on any

ground, or for any purpose, will retain such jurisdiction for the purpose of administering complete relief and doing entire justice with respect to the subject matter, particularly with respect to the enforcement of its own decree, and this is true whether the question is of remedy or of distinct yet connected topics of dispute, and whether the rights and remedies involved are legal or equitable."

19 Am. Jur., Equity, Sec. 127, states:

"The rule is that equity will not enter a partial or incomplete decree. Having taken cognizance of a cause for any purpose, a court of equity will ordinarily retain jurisdiction for all purposes: decide all issues which are involved by the subject matter of the dispute between the litigants; award relief which is complete and finally dispose of the litigation so as to make performance of the court's decree perfectly safe to those who may be compelled to obey it; accomplish full justice between the parties litigant; and prevent future litigation. * * *."

Undoubtedly this Court can, and will, consider the ability of States affected by its decision, to endeavor to conform to the doctrine of only one system (without distinction as to color) in public education; and it is respectfully submitted that this Court should consider the financial problems of a State—such as ours—in determining *when and how* there shall be an affirmance from this Court respecting the time for the ultimate cessation of segregation.

The problem of the State of Oklahoma in adjusting or changing the financial structure for maintaining public schools is a serious one, grounded in constitutional

and statutory provisions of long standing—the uprooting of which, in an effort to conform, will take time to solve. Therefore, it is respectfully suggested that this individual problem of the State of Oklahoma be considered by this Court in making a fully equitable and final disposition of these cases, and the principles therein laid down.

MAC Q. WILLIAMSON,
Attorney General of Oklahoma,
Oklahoma City, Oklahoma,
Amicus Curiae.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1954

Nos. 1, 2, 3, and 5

OLIVER BROWN, ET AL.,
Appellants,

v.

BOARD OF EDUCATION OF TOPEKA, SHAWNEE COUNTY, KANSAS, ET AL.,
On Appeal from the United States District Court for the District of Kansas

HARRY BRIGGS, JR., ET AL.,
Appellants,

v.

R. W. ELLIOTT, ET AL.
On Appeal from the United States District Court for the Eastern District of South Carolina

DOROTHY E. DAVIS, ET AL.,
Appellants,

v.

COUNTY SCHOOL BOARD OF PRINCE EDWARD COUNTY, VIRGINIA, ET AL.
On Appeal from the United States District Court for the Eastern District of Virginia

FRANCIS B. GEBHART, ET AL.,
Petitioners,

v.

ETHEL LOUISE BELTON, ET AL.
On Writ of Certiorari to the Supreme Court of Delaware

BRIEF OF JOHN BEN SHEPPERD, ATTORNEY GENERAL OF TEXAS, AMICUS CURIAE

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On Writ of Certiorari to the Supreme Court of Delaware

BRIEF OF JOHN BEN SHEPPERD, ATTORNEY GENERAL OF TEXAS, AMICUS CURIAE

TO THE HONORABLE SUPREME COURT OF THE UNITED STATES:

PRELIMINARY STATEMENT

John Ben Shepperd, Attorney General of Texas, pursuant to request for leave to appear amicus curiae and file a brief, submits this amicus curiae brief to the Court upon the condition that such appearance will not have the effect of making the State of Texas or any of its officers or agencies parties to this litigation.

In compiling data for this brief a sincere effort has been made to obtain a correct cross section of views of educators, legislators and others with knowledge of the subject matter under consideration. Surveys have been made, public opinion has been sampled, and composite views of groups best acquainted with the segregation problem have been obtained. The Texas Education Agency has been most helpful in furnishing pertinent materials which have been used in this brief. We will attempt to present the true Texas picture as reflected from this research.

The public school system in Texas from its inception has been operated and maintained on a segregated basis, and has existed for more than eighty years under the authority of Section 7 of Article VII of the Texas Constitution (1876)[1] and statutes enacted pursuant thereto. This constitutional and statutory authority creating separate but equal facilities

[1] Section 7 of Article VII of the Texas Constitution provides: "Separate schools shall be provided for the white and colored children, and impartial provision shall be made for both."

in the public school system of Texas was the direct and continuing result of the expressed will of the people of Texas. This Honorable Court in many of its decisions has held that the states may provide education at their own expense for the white and Negro students in separate schools so long as equal facilities and advantages are offered both groups. *Plessy v. Ferguson*, 163 U.S. 537 (1896), and related cases. Stability and harmony in the law, particularly in the constitutional law, is a primary requirement in an effective and efficient government. When the courts have announced, for the guidance and government of individuals and the public, certain controlling principles of law, they should not be changed, because the law by which men are governed should be fixed, definite and known, particularly when millions of dollars have been spent in reliance thereon. Attending a public free school is a privilege extended by the state. It is not a right of a citizen of the United States. *Cumming v. Richmond County Board of Education*, 175 U.S. 528, 545 (1899). So long as the privileges extended to all groups are equal no one is deprived of the equal protection of the law. The decisions of this Honorable Court have recognized that, where necessity exists, the teaching of white and Negro students in separate classrooms is a reasonable exercise of the state's police power. To preserve the public peace, harmony and the general welfare, the people of Texas in their Constitution, and the Legislature by statutes have declared that such a necessity exists in Texas. There is no *discrimination* on the part of the State of Texas in administering its public school system, only *separation* of the

races. It is the belief of the people of this State that discrimination against the individual can best be eliminated by segregation of the races in the educational system. It is the evil of discrimination and not segregation per se that is condemned by the United States Constitution.

Section 7 of Article VII of the Texas Constitution and related statutes provide that the State shall furnish equal education to its Negro and white students. The State of Texas has been operating under the assumption that the power of states so to classify and the reasonableness of the classification had been settled as a matter of law since 1896 and was not violative of the equal protection clause of the Fourteenth Amendment.

However, if the occasion arises whereby we are compelled to abolish segregation in Texas, it should be by a gradual adjustment in view of the complexities of the problem. Such complexities include the unwillingness of the Texas people immediately to abide by the decision, the varying degrees in which different areas of the State of Texas would be affected, and the result such a decision would have on the State's public school system which has been maintained on a segregated basis for generations.

Legal action which bears upon the folkways of nearly one-fourth of the nation's population cannot be effective unless the affected group is largely willing to abide by it. No individual can be forced against his will to accept, associate, or cohabit with another not of his own choosing. The Fourteenth Amendment to the United States Constitution prohibits only

"*State action*" which is discriminatory because of race, creed or color, not the prejudices or discrimination evidenced by individuals toward their fellow man. *United States v. Cruikshank*, 92 U.S. 542 (1876). And while it has been determined that equal but separate facilities maintained in the public free school systems of the states involved in this litigation is "State action" in violation of the Fourteenth Amendment, still this Court should consider that such a decision also affects the individual rights, mores and beliefs of the Southern people. To insure that the people of the South accept the decision and make moral decisions of their own commensurate with the end of bettering the Negro race, some way must be found to protect the constitutional rights of the minority without ignoring the will of the majority. The underlying thought implicit in the Court's decision in these cases is that a feeling of inferiority is generated in the Negro child, resulting not from *actual attendance* in a segregated school, but from the *legal requirement* under which the Negro child is forced to attend separate schools. From the standpoint of principle, there is no real difference between compulsory segregation and compulsory integration. Compulsion can only arouse resentment, individual discrimination, and, as experience has demonstrated in other states, violence. The objectives reached by the War between the States left a scar of bitterness and resentment that is visible even now in some parts of the South. Such, we hope, will not be the result of this Court's May 17th decision.

Variance of Degree in Which Different Areas Would Be Affected

In order that this Honorable Court have the full assistance of all parties and amici curiae in formulating decrees, these cases were restored to the docket for the presentation of further argument upon the following questions:

> "4. Assuming it is decided that segregation in public schools violates the Fourteenth Amendment
>
> (a) would a decree necessarily follow providing that, within the limits set by normal geographic school districting, Negro children should forthwith be admitted to schools of their choice, or
>
> (b) may this Court, in the exercise of its equity powers, permit an effective gradual adjustment to be brought about from existing segregated systems to a system not based on color distinctions?
>
> 5. On the assumption on which questions 4 (a) and (b) are based, and assuming further that this Court will exercise its equity powers to the end described in question 4 (b),
>
> (a) should this Court formulate detailed decrees in these cases;
>
> (b) if so, what specific issues should the decrees reach;
>
> (c) should this Court appoint a special master to hear evidence with a view to recommending specific terms for such decrees;
>
> (d) should this Court remand to the courts of first instance with directions to frame de-

crees in these cases, and if so, what general directions should the decrees of this Court include and what procedures should the courts of first instance follow in arriving at the specific terms of more detailed decrees?"

The following factual information is submitted which we believe to be pertinent insofar as the State of Texas is concerned.

The State of Texas has a total population of seven million, seven hundred eleven thousand, one hundred ninety-four (7,711,194), of whom nine hundred seventy-seven thousand, four hundred fifty-eight (977,458), or 12.7%, are colored.[2] The concentration of the Negro population is shown by counties on the map designated "Appendix I." There are one million, seven hundred eighty-six thousand, nine hundred eighteen (1,786,918) persons of scholastic age enumerated in the scholastic census for the 1954-1955 school year, of whom two hundred thirty thousand, five hundred forty-six (230,546), or 13%, are colored. The concentration of the Negro scholastic population is shown by counties on the map designated "Appendix II." Texas has two hundred fifty-four (254) counties. There are located in the northeastern forty-five counties of this State 50% of the colored scholastics of Texas, and in four of these counties the Negro s holastics comprise a majority of the county's schol stics. In the forty-three counties adjacent to and immediately west of the northeastern block of counties above referred to, another 40% of the colored scholastics reside. Thus, in Texas today ap-

[2] This population is based on the 1950 Federal Census.

proximately 90% of the total Negro scholastics are located in the eighty-eight counties comprising the northeastern quadrant of the State. Forty-one Texas counties do not list a single Negro scholastic. Therefore the remaining 10% of the colored scholastics of Texas are scattered throughout the remaining one hundred and twenty-five counties. A map evidencing this factual information is attached and designated "Appendix III", to which particular reference is made. A study of this map reveals that the segregation problem in Texas is not state-wide, but is of serious import and of vital concern to our local school districts.

Of the two hundred and thirteen Texas counties listing Negro scholastics, one hundred forty-six counties offer a complete Negro high school, twenty-one counties offer some Negro high school, but not twelve grades, and thirty-six counties offer only Negro elementary school. Ten counties operate no school for Negroes; however, these counties have ten or fewer Negro scholastics. Negro scholastics in counties not having a complete twelve grades are transported at State expense to other schools. Texas in 1953-54 had a total of one thousand, nine hundred fifty-three (1,953) active school districts, two hundred ninety-two (292) of which offered a full twelve grade school for both white and Negro. One hundred twenty-five (125) districts maintained a Negro school but did not have a white school. A total of nine hundred fifty-six (956) districts provided Negro schools. The districts that did not maintain a school for Negroes were primarily in areas that did not contain Negro scholastics.

Texas Public School System

Pursuant to the constitutional authority, the Texas public school system is administered under what is commonly called "The Minimum Foundation School Program."[1] Under this very effective program, education of the Texas school child is provided on an equal but separate basis, with millions of dollars being spent each year. Under the Minimum Foundation Program, as administered by Texas' twenty-one-member elective State Board of Education, all possible control and responsibility are left to local school administrators and local school boards to provide school programs to meet the needs of the children in their communities. As the name implies, the Minimum Foundation Program guarantees to every school-age child in Texas, regardless of race, creed, color, economic status or place of residence, at least a *minimum* of a full nine months of schooling each year, thereby spreading the State's financial resources available for public education as equally as possible among all the people. The Program has been in effect for five years, and during that time the average daily attendance of school-age children actually attending school has risen from 73.77% in 1948-49 to 80.85% during 1953-54. 79.31% of the Negro school-age children were in average daily attendance in 1953-54.

The Minimum Foundation Program provides a system of financing which guarantees to local school districts that State funds will be available to pay the

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[1] Art. 2922-11, et seq., Tex. Civ. Stat. (Vernon's, 1948).

cost of a minimum school program when local funds are insufficient.

A number of the Texas school districts do not need a supplemental appropriation from the Legislature. A majority of the Texas schools have surplus money derived from local taxation with which to enrich the local school program beyond the minimum program prescribed by the State. Expenditures from surplus funds provide adult and kindergarten classes for students not included in the scholastic census age brackets, classes for exceptional children, supplemental expenditures on salaries, maintenance and capital costs, and any other authorized school costs. The State funds are provided in proportionate equality to all school districts, for the benefit of all scholastics, irrespective of race, creed or color. If a school program superior to the minimum requirements is desired in any district, it may be paid for by the taxes voted, levied and collected from the taxpayers of the district.

As a result of the Minimum Foundation Program, teachers' and school administrators' salaries have risen from twenty-ninth in the nation to sixteenth. 97.1% of the Texas teachers now have college degrees. Only the State of Arizona exceeds this mark. There are approximately eight thousand, five hundred (8,500) Negro teachers and school administrators in Texas. This number is nearly equal to the total number of Negro educators in the thirty-one Northern and Western States which practice non-segregation. According to the *U. S. News and World Report*, August 27, 1954, only one out of every seventy-three teachers in those thirty-one states

maintaining an integrated system is a Negro, while in Texas, one out of every five is a Negro. These positions are believed to be the most secure and best paid employment the Negro has today. The effect of this decision upon the teaching profession is speculative, and any decree which would disrupt the stability and security of teachers should be avoided.[4]

Under the Minimum Foundation Program, the public school system of Texas has greatly raised its standards, teachers have been benefited by salary increases and retirement plans, and every school-age child in Texas, without regard to his race, creed or color, has been offered the opportunity of education. The State has not discriminated in its appropriations, such being provided equally to all races and persons, with the privilege and authority in each local district to go further if it is so desired. But the program does provide for separate schools, segregating the races and contemplating an equalization of facilities for all scholastics. Integration would require alteration of the Minimum Foundation Program.

The establishment of an integrated system is not a problem which would apply equally to West or South Texas, where there is only a small percentage of the Negro population, and to Northeast Texas, where the concentration of the Negro population is the heaviest. No equitable general decree could ever be formulated for the entire State of Texas. Specific decrees could be made only after a particular school

[4] Texas at the present time has no tenure statute for teachers in the public free schools. Employment is through the local school boards.

district was before this Court and the facts relevant to that district were presented. It would be impossible to get enough facts before the Court in one isolated case upon which the Court could enter a general decree which would apply equally to all parts of this State or to all the states practicing segregation. Since we do not know the various fact situations as they exist in these cases, we are in no position to advise the Court as to the type of decree that should be entered.

QUESTION FOUR

4. Assuming it is decided that segregation in public schools violates the Fourteenth Amendment

(a) Would a decree necessarily follow providing that, within the limits set by normal geographic school districting, Negro children should forthwith be admitted to schools of their choice, or

(b) May this Court, in the exercise of its equity powers, permit an effective gradual adjustment to be brought about from existing segregated systems to a system not based on color distinctions?

Argument

This Court has recognized the complexities involved in the formulation of a decree in these cases because problems of different characteristics are presented. Evidently all states were invited to appear

because each should have an opportunity to demonstrate the obstacles to adjustment in compliance with any decision that might be rendered in the future affecting the individual states.

It is respectfully submitted that this Court is authorized to permit an effective gradual adjustment toward integration and, unquestionably, if the occasion arises, the administration of this program in Texas must be left to the local school districts. The education system in Texas is predicated upon a number of local, self-governing school districts, with full authority to administer the school system. The basic and historic concept of public free schools is based upon the democratic and salutary principle of local self-government. The schools in Texas are operated, maintained and controlled by local school boards elected by the people of the individual school district.[5] Operational and maintenance costs are provided by local taxation voted by the taxpayers of the district[6] and supplemented by the Legislature under the Minimum Foundation Program.[7] Capital expenditures are made through bond issues voted by the taxpayers of the district.[8] All personnel of the school, with the exception of the elected officials, are employed by local

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[5] *Southwestern Broadcasting Company v. Oil Center Broadcasting Company*, 210 S.W. 2d 230 (Tex. Civ. App., 1947, error ref. N.R.E.); *University Interscholastic League v. Midwestern University*, Tex. , 255 S.W. 2d 177 (1953); Arts. 2745, 2749, 2775 et seq., and 2780, Tex. Civ. Stat. (Vernon's, 1948).

[6] Art. 2784e, Tex. Civ. Stat. (Vernon's, 1948).

[7] See discussion of the Texas Public School System in this brief.

[8] Art. 2784e and Art. 2786, Tex. Civ. Stat. (Vernon's, 1948).

officials and work under such officials' supervision.[9] It is thus seen that the schools in Texas constitute almost a complete local autonomy controlled by the taxpayers of the individual school districts and their locally elected school board. In fact, the courts of Texas have repeatedly held that these school districts are local public corporations of the same general character as municipal corporations.[10] Any decree of the Court that might affect Texas must leave this administration in the local school districts unhampered. The problems with which we are confronted can best be resolved at the local level in this manner.

As a basic premise for showing the need for a transition period, the following is typical of the feeling of Texas citizens and school administrators on the vital subject now before this Court.

In an article appearing in *The Dallas Morning News* on June 9, 1954, Dr. J. W. Edgar, Texas Commissioner of Education, stated:

> "Texas has 2,000 problems as a result of the Supreme Court's decision. We have 2,000 school districts, and they vary from totally white to totally Negro.
>
> "The final decree by the Court ought to permit continued management of local districts by local boards. Schools must be run on a community basis. They can't be run successfully from Washington or even from Austin (Texas).
>
> "Experience in separating children on a language basis has proved to us that where the re-

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[9] Art. 2750a and Art. 2781, Tex. Civ. Stat. (Vernon's, 1948).

[10] *Hatcher v. State*, 125 Tex. 84, 81 S.W. 2d 499 (1935); *Love v. City of Dallas*, 120 Tex. 351, 40 S.W. 2d 20 (1931).

sponsibility is put upon the local community, they work honestly to resolve differences.

"Anything which schools do effectively must be done with local support. We don't care to tell others how to run their schools, but we certainly believe that our 2,000 problems can be resolved best if the Supreme Court leaves control in local districts."

In a statement made to the Texas Commission on Higher Education, Dr. R. O'Hara Lanier, Negro president of Texas Southern University, stated:

"In spite of the U. S. Supreme Court's anti-segregation ruling, Negro schools will be needed more than ever in the future. It would be a narrow position for the state to get rid of Negro schools for if the Negroes are given equal facilities there is nothing to worry about from segregation.

"For many years to come there will be shown a great desire and preference on the part of the Negro student to attend an institution equal in every respect, where there will exist many opportunities for development for qualities of leadership and where full participation in every phase of college life will be assured.

"Because of human behavior and social backgrounds and patterns long existent, the large majority of such students will come to us (the Negro schools) because they prefer to do so.

"Such students very likely will prefer to continue to study with homogeneous groups and will feel strongly that more sympathetic attention will be given to them in our institutions than in some other schools."

Dr. E. B. Evans, Negro president of Prairie View A. & M. College, expressed similar views to the Commission

The latest state-wide survey of the Texas Poll[11] on September 12, 1954, indicates:

"1. 71% of the Texas people are definitely opposed to the Supreme Court's decision. The breakdown on the decision is like this:

	Approve	Disapprove	Undecided
Negroes	60%	33%	7%
Latins	49%	37%	14%
Other Whites	15%	80%	5%
Entire Public	23%	71%	6%

"2. What should be done about the problem? 7% favor putting the Court's ruling into effect immediately, and another 23% believe plans should be made to bring the races together in the schools within the next few years. A majority of 65% goes on record in favor of continued segregation notwithstanding the Court's decision. The breakdown on this problem is:

	Go Now	Few Years	Keep Apart	Undecided
Negroes	27%	40%	26%	7%
Latins	20%	37%	33%	10%
Other Whites	3%	19%	74%	4%
Entire Public	7%	23%	65%	5%

In the entire public, Negroes account for about 12% of the population; Latins, about 11%; and other whites, about 77%."

In a recent questionnaire forwarded by the Attorney General of Texas to approximately one hun-

[11] A long-established Texas organization operated by Joe Belden who periodically and systematically conducts a scientific sampling, or polling, and reporting thereon, of public opinion in Texas on current events.

dred fifty-two Texas school administrative officials, seventy-seven reported that 85% or more students would continue attending the same school if they had free choice. Of this number, fourteen answers were from Negro administrators. Only three answered that students in their districts would prefer attending integrated schools, and all three reports were from Negro administrators. The questions propounded and the answers received by the Attorney General are compiled in a report which is attached as "Appendix IV."

Many plans have been advanced to alter the public school system of Texas as a result of the May 17th decision. Some go so far as to suggest the complete abolition of the free public school system, while others advocate turning the State schools into private schools. The decision of the United States Supreme Court is to the effect that segregation in public schools maintained by compulsion of law is unconstitutional as being in violation of the Fourteenth Amendment. Many suggest that it does not necessarily follow that integration of the white race with the colored race in the field of education is compelled by the Constitution. If, under the Fourteenth Amendment, all citizens are entitled to equal protection of the law, which was the premise for the Supreme Court's decision, then integration can no more be compelled than can segregation. Provision for domestic tranquility in the exercise of the police powers of the State premised the original laws requiring segregation. To maintain public peace, good order and the domestic tranquility, these same police pow-

ers of the State could be exercised, calling for another and differ. t provision relating to public education.

Realizing this, and that the need for compulsion no longer exists, another plan suggests that the section of the law which provides for compulsory education should be repealed and the laws providing that the State furnish free education to all should be left undisturbed. Then the present laws should be amended to allow the parent or guardian of the child desiring to take advantage of free education to express his own desires and preferences as to the type of school the child should attend. The parent or guardian could select a school in which the majority of the other pupils are of the same race as the child, or he could select a school in which the other pupils are of both races, thereby providing equality of opportunity and freedom of individual choice.

This change would remove the unconstitutional "compulsion" of segregation, and at the same time the State would be in a position of honoring the individual preferences of its people.

Another plan advanced is that of allowing voluntary transfers between school districts, and it is based upon the same principle as the foregoing.

In complying with the mandatory duties placed upon the Legislature of the State of Texas by the Constitution of the State of Texas, the Legislature has by general law established, supported and maintained a segregated public free school system. These laws of the State of Texas are not before the Court in these causes, and the State Board of Education has ruled that the schools of Texas should continue to be operated in the same manner until otherwise di-

rected.[12] Since the end of World War II, Texas, together with many of our states, has been confronted with the enormous task of providing adequate school housing for a shifting and rapidly increasing population. In areas predominantly populated by white students schools have been built to house these students. In areas predominantly populated by colored students schools have also been built to house them. Utilization of all present school housing to the fullest extent in this State will be an absolute necessity. Texas is also confronted with the difficult problem of providing adequate facilities for the anticipated increase in its scholastics in the interim between now and 1960. Statistics reveal that at the close of the 1958-1959 school year, eight hundred forty-nine million, three hundred forty-four thousand, nine hundred twenty-two dollars ($849,344,922) will be needed over and above the present needs to care for the increase in population and replacement costs on existing facilities. Of this amount, only three hundred ninety-four million, eight hundred fifty-eight thousand, fifty-two dollars ($394,858,052) can be anticipated from local funds, leaving a balance of four hundred fifty million, four hundred eighty-six

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[12] On July 5, 1954, the State Board of Education passed the following resolution: "Since the recent United States Supreme Court's decisions on segregation in public schools are not final, the State Board of Education of Texas is of the unanimous opinion that it is obligated to adhere to and comply with all of our present state laws and policies providing for segregation in our public school system and to continue to follow these present laws and policies until such time as they may be changed by a duly constituted authority of this State. If in the future, the Texas laws should be changed then each local district should have sufficient time to work the problem out. . . ."

thousand, eight hundred seventy dollars ($450,486,-870) which must be derived from another source to care for the needs of the school children for the school year of 1960. The school system is presently overcrowded with certain school-age groups being separated into morning and afternoon classes to offset this condition. It can readily be seen that if Texas attempted an immediate integration, the perplexities confronted in accomplishing the same would be overwhelmingly multiplied. Additional facilities are needed and will have to be supplied by local bond issues. It is highly speculative as to whether such bond issues would be voted to house an integrated school system which an overwhelming majority of the people oppose. The election calls for freedom of choice and no mandamus action could be maintained to force an affirmative vote. At this time it would be highly impracticable to eliminate any of the present school housing, and great consideration must be given to the natural and presently existing boundary lines which, of course, is the prime consideration for the Legislature or the local school board.

A gradual transition to an integrated public school system is not a denial of relief or of the constitutional rights enunciated by the Court. The Court has previously permitted a transition period in analogous situations, particularly in the antitrust and nuisance cases. In *United States v. American Tobacco Co.*, 221 U.S. 106 (1911), the Supreme Court determined that the defendant had violated the Sherman Anti-Trust Act. Recognizing the need for adjustment to its decree, the Court, in order to avoid and mitigate any possible injury to the interest of the general public,

remanded the case to the lower court to hear the parties and to ascertain and determine a plan for dissolution of the combination. To accomplish this end, the Court allowed sufficient time (eight months) to carry out its decree. In *Georgia v. Tennessee Copper Co.*, 240 U.S. 650 (1916), the Court entered a final decree in a case in which the State of Georgia had sued the Tennessee Copper Company to restrain the discharge of irritating gases into Georgia. The case had involved three lawsuits and covered a span of nine years in which the Court allowed considerable time and discretion to devise ways and means of subduing and preventing the escape of the noxious fumes. In *Railroad Commission of Texas v. Pullman Company*, 312 U.S. 496 (1941), the Pullman Company brought suit in the Federal Court against the Railroad Commission of Texas attacking a regulation of the Commission as being in violation of the Federal Constitution and unauthorized by the Texas statutes. The Court remanded the case to the lower court, with directions to retain the bill pending a determination of proceedings, to be brought within a reasonable time in the state court to determine a definite construction of the state statute.[13]

The use of administrative discretion and its limits has been spelled out often by the Court in the areas of administrative agencies. The Court has emphasized consistently that supervision and discretion should lie with the administrative agencies in conducting their functions as economic and political gov-

[13] See also: *New Jersey v. City of New York*, 283 U.S. 473 (1931); *Standard Oil Co. v. United States*, 221 U.S. 1 (1911); *Northern Securities Company v. United States*, 193 U.S. 197 (1904).

erning boards.[14] Such emphasis is closely related also to the administrative discretion which exists in school boards. In *United States v. Paramount Pictures*, 334 U.S. 131 (1948), Mr. Justice Douglas reviewed a decree in an injunction suit by the United States under the Sherman Act to eliminate or qualify certain business practices in the motion picture industry. A provision in the decree that films be licensed on a competitive bidding basis was eliminated by the Supreme Court *as not likely to bring about the desired end and as involving too much judicial supervision to make it effective.* This elimination was held to require reconsideration by the district court of its prohibition of the expansion of theatre holdings by distributors and provisions for divesting existing holdings.

The Court at page 163 stated:

> "It would involve the judiciary in the administration of intricate and detailed rules governing priority, period of clearance, length of run, competitive areas, reasonable return and the like. The system would be apt to require as close a supervision as a continuous receivership, unless the defendants were to be entrusted with vast discretion. The judiciary is unsuited to affairs of business management; and control through the power of contempt is crude and

[14] See *Alabama Public Service Commission v. Southern Railway Company*, 341 U.S. 341 (1951); *Burford v. Sun Oil Co.*, 319 U.S. 315 (1943); and *Far Eastern Conference, United States Lines Co., States Marine Corporation, et al. v. United States and Federal Maritime Board*, 342 U.S. 570 (1952).

> clumsy and lacking in the flexibility necessary to make continuous and detailed supervision effective."

The implications in the Court's opposition to judicial administration of intricate and detailed rules in the economic field apply with greater force to the social relationship and problems created by these cases in the field of public education. Furthermore, the amount of capital involved in the *Paramount* case is minute when compared with the wealth invested in the public school systems of the South.

The Court, in *Barbier v. Connolly*, 113 U.S. 27 (1885), speaking of the Fourteenth Amendment, stated at page 31:

> "But neither the amendment—broad and comprehensive as it is—nor any other amendment, was designed to interfere with the power of the State, sometimes termed its police power, to prescribe regulations to promote the health, peace, morals, *education and good order* of the people. . . ." (Emphasis supplied.)

A tremendous portion of the wealth of these states has been invested in capital expenditures for their public schools. The only practical method of establishing an integrated system calls for a period of implementation in our present dual system. This Court in the exercise of its equity powers has ample authority to permit the parties to adjust gradually from their existing segregated systems to an integrated one. The instant cases affect millions of individuals and the entire public in some seventeen states. By reason of the great number of people affected by

the decree and by reason of the vast amount of money invested in capital expenditures, and because of the necessity to make use of all present buildings in the operation of an efficient system of public education, this Court should permit the states to adjust their dual systems gradually into an integrated system. It is therefore, respectfully submitted that this Honorable Court has sufficient authority to permit a gradual adjustment to an integrated school system with sufficient time given for local school officials to accomplish this purpose by the exercise of their administrative authority.

QUESTION FIVE

5. On the assumption on which Questions 4 (a) and (b) are based, and assuming further that this Court will exercise its equity powers to the end described in Question 4 (b),

(a) Should this Court formulate detailed decrees in these cases;

(b) If so, what specific issues should the decrees reach;

(c) Should this Court appoint a special Master to hear evidence with a view to recommending specific terms for such decrees;

(d) Should this Court remand to the courts of first instance with directions to frame decrees in these cases, and if so, what general directions should the decrees of this

Court include and what procedures should the courts of first instance follow in arriving at the specific terms of more detailed decrees?

Argument

The information contained in the introductory statements and in Appendix III clearly demonstrates that the problem of establishing a public school system not based on race is a localized problem in Texas, not a state-wide problem. This is further evidenced in Appendix V, which is a compilation of scholastic population by counties. It is not a problem in which the remedy voluntarily adopted in West Texas or South Texas would be equally applicable and effective in Northeast Texas. For that reason no equitable general decree could be formulated which would be appropriate for every part of the State of Texas. Specific decrees would have to be provided for each case, based on the facts and conditions then presented to the Court which are shown to exist in the locality involved in a proper case.

Section 1 of Article VII of the Constitution of Texas imposes the duty on the Legislature to establish, support and maintain our system of public free schools.[15] This Court announced on May 17, 1954, that segregation in public education is a denial of the

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[15] Section 1 of Article VII of the Constitution of Texas provides: "A general diffusion of knowledge being essential to the preservation of the liberties and rights of the people, it shall be the duty of the Legislature of the State to establish and make suitable provision for the support and maintenance of an efficient system of public free schools."

equal protection of the laws. Since that time the Texas Legislature has not met in session, and it is not known at this time what action the Legislature will take, if any.

In *Minersville School District v. Gobitis*, 310 U.S. 586 (1940), this Court stated that it did not want to become the school board for the entire country. At page 598 the Court stated:

> "But the courtroom is not the arena for debating issues of educational policy. It is not our province to choose among competing considerations in the subtle process of securing effective loyalty to the traditional ideals of democracy, while respecting at the same time individual idiosyncrasies among a people so diversified in social origins and religious alliances. *So to hold would in effect make us the school board for the country. That authority has not been given to this Court, nor should we assume it.*" (Emphasis supplied.)

Keeping the control of public education close to the local people is perhaps the strongest tradition in American education. One of the predominant characteristics of American education is the variation in local policies and procedures in terms of unique local conditions. The Texas Legislature has the right and duty to maintain public safety and good order. This Court, in the *Gobitis* case,[16] supra, recognized its

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[16] That portion of the *Gobitis* case dealing with the validity of a statute requiring a compulsory flag salute was overruled in *Board of Education v. Barnette*, 319 U.S. 624 (1942).

limitations and the authority of the state legislatures when it said at page 597:

> "The precise issue, then, for us to decide is whether the legislatures of the various states and the authorities in a thousand counties and school districts of this country are barred from determining the appropriateness of various means to evoke that unifying sentiment without which there can ultimately be no liberties, civil or religious. To stigmatize legislative judgment in providing for this universal gesture of respect for the symbol of our national life in the setting of the common school as a lawless inroad on that freedom of conscience which the Constitution protects, would amount to no less than the pronouncement of pedagogical and psychological dogma *in a field where courts possess no marked and certainly no controlling competence.*" (Emphasis supplied.)

Other decrees have been held in abeyance until an appropriate action could be taken by the proper agency. See *Addison v. Holly Hill Co.*, 322 U.S. 607 (1944), and *Railroad Commission of Texas v. Pullman Company*, 312 U.S. 496 (1940).

This Court has the authority to remand these cases to the courts of first instance, instructing them to enter decrees implementing the principles enunciated in the Court's opinion of May 17, 1954. See *International Salt Company v. United States*, 332 U.S. 392 (1947). If this decision stands, then on remand the courts of first instance would be familiar with local conditions and could provide a continuing supervision over the program of non-discrimination.

They could recognize and adjust the equities between the parties, bringing individual rights into equality without unduly hindering the public school program.

CONCLUSION

Since our position before the Court is that of amicus curiae only and not that of a party, ordinarily we would not assume to state specifically the scope of the decrees to be entered by the Court in these cases. If the Court attempted to formulate a general decree applicable to all school districts and States, it would be prejudging a multitude of cases not before the Court. However, in entering appropriate decrees the Court should consider the following suggestions which are respectfully submitted at the request of the Court:

(1) In formulating a decree or decrees, the Court should recognize the long established traditions and usages which have prevailed in those States maintaining a segregated school system, such as Texas, under the separate but equal doctrine as predicated upon the principles announced in *Plessy v. Ferguson*, supra. These traditions and usages should not be suddenly and abruptly destroyed. A period of orderly transition will insure that a decree will meet with no more than passive resistance by the public.

(2) In formulating a decree or decrees, this Court must preserve the democratic and salutary principle of local self government inherent in our public school systems. Any decree or decrees entered by the Court should protect this principle. In this manner the decrees could appropriately be implemented by the local

school authorities as a legislative and administrative matter.

(3) The Court, in formulating a decree or decrees, should preserve the right of free selection and choice by the patrons of public schools in selecting the school which will be patronized.

Respectfully submitted,

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APPENDIX IV

Educators' Views on Integration

On July 30, 1954, the Attorney General of Texas directed a questionnaire to one hundred and fifty-two Texas school administrative officials. One hundred two questionnaires were mailed to white administrators and fifty questionnaires were mailed to Negro administrators. Twelve of the questionnaires were directed to county superintendents, fifty were directed to school principals and ninety were directed to district superintendents. Responses were received in eighty-two instances, eighteen of which were from Negro educators.

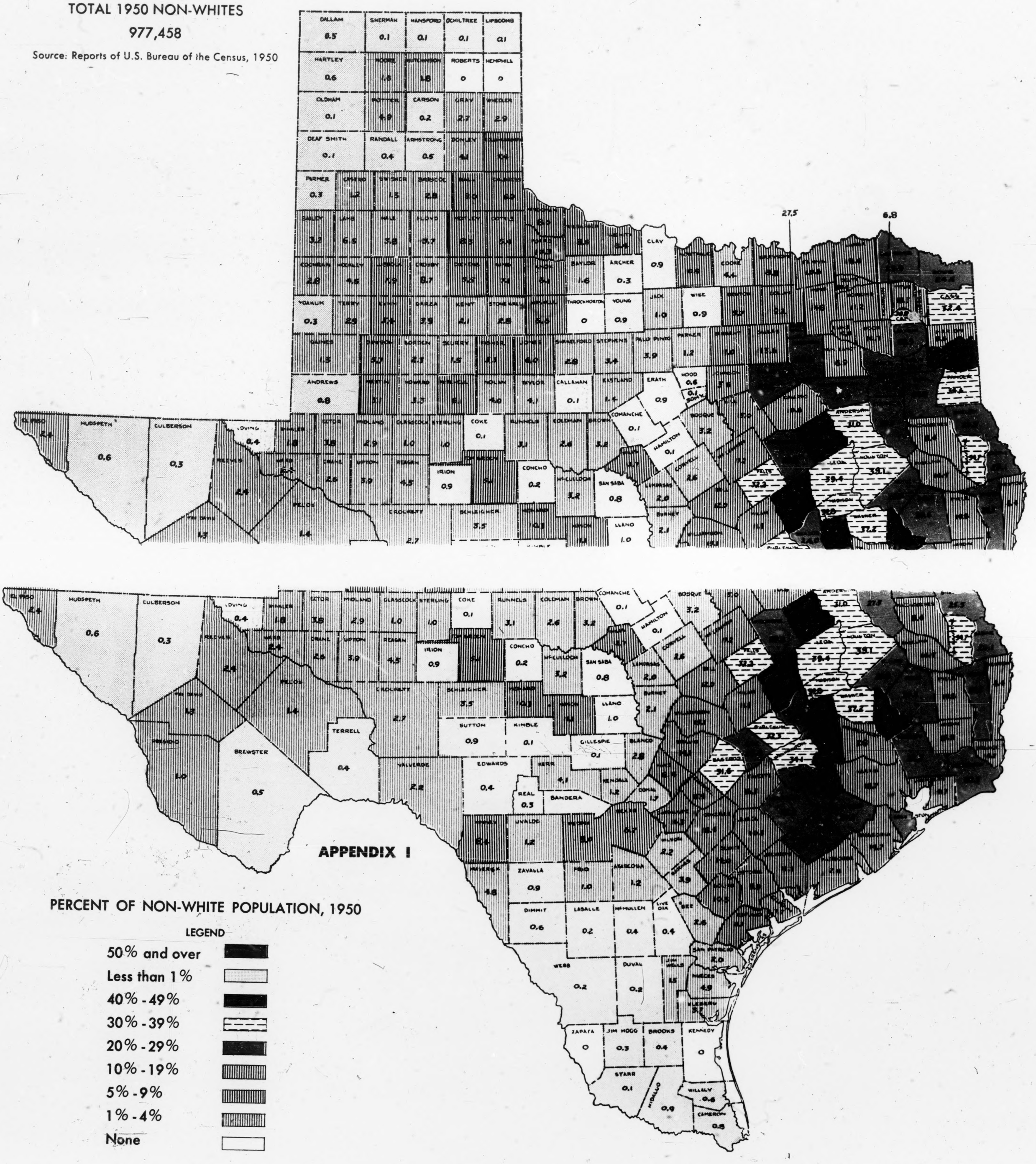
The questionnaire and evaluated responses are:

"We are in the process of compiling data to determine the feasibility of filing an amicus curiae brief in the United States Supreme Court relative to the recent segregation decisions which affects our public school system. Our school system operates under legislative authorization, and the Legislature will not convene in Regular Session until January to consider the problem arising by reason of the Supreme Court decision. Consequently, if any brief is filed, it should contain a cross-section of the views of educators and the public generally in Texas in an effort to see what impact the decision has made on our public school system and customs.

"By reason of your long familiarity with the field of education throughout the State we would like to have an expression of your views on the following questions:

TOTAL POPULATION
TOTAL 1950 NON-WHITES
977,458

Source: Reports of U.S. Bureau of the Census, 1950



APPENDIX I

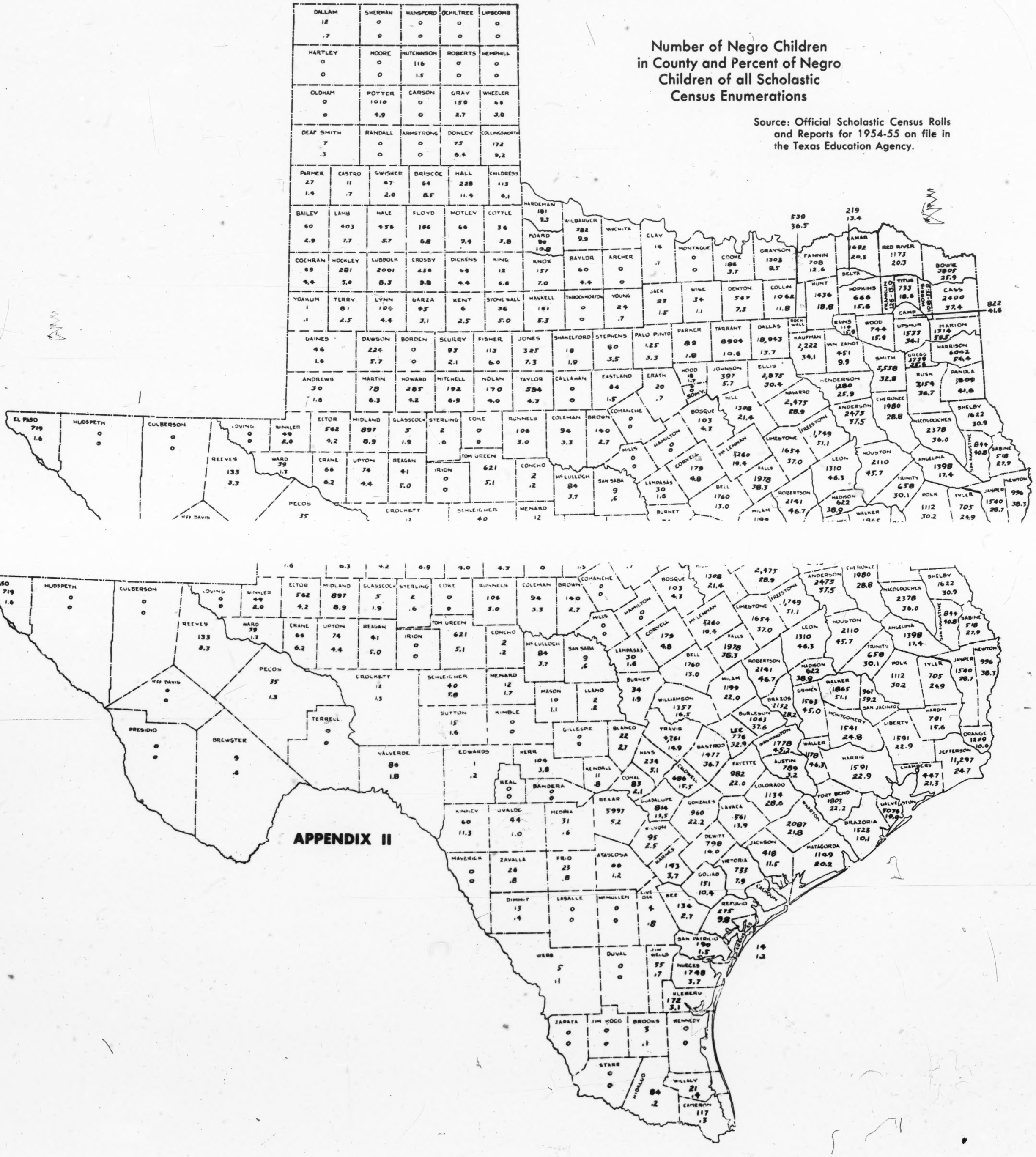
PERCENT OF NON-WHITE POPULATION, 1950

LEGEND

- 50% and over
- Less than 1%
- 40% - 49%
- 30% - 39%
- 20% - 29%
- 10% - 19%
- 5% - 9%
- 1% - 4%
- None

1954-55 SCHOLASTIC

(Children between 6-17 inclusive as of September 1, 1954, Residence as of February 1, 1954)



Number of Negro Children in County and Percent of Negro Children of all Scholastic Census Enumerations

Source: Official Scholastic Census Rolls and Reports for 1954-55 on file in the Texas Education Agency.

APPENDIX II

254 COUNTIES

13% of Population Ages 6-17 inclusive is Negro

230,546 Negroes, 1,556,372 Whites — 1,786,918 Total Population

166 COUNTIES

10% of Total Negro Population

21,470 Negroes
654,199 Whites

3% of Population is Negro

Counties, no Negroes (41)

[There are more Negroes, 32,559, in Harris County than in this entire area]

88 COUNTIES

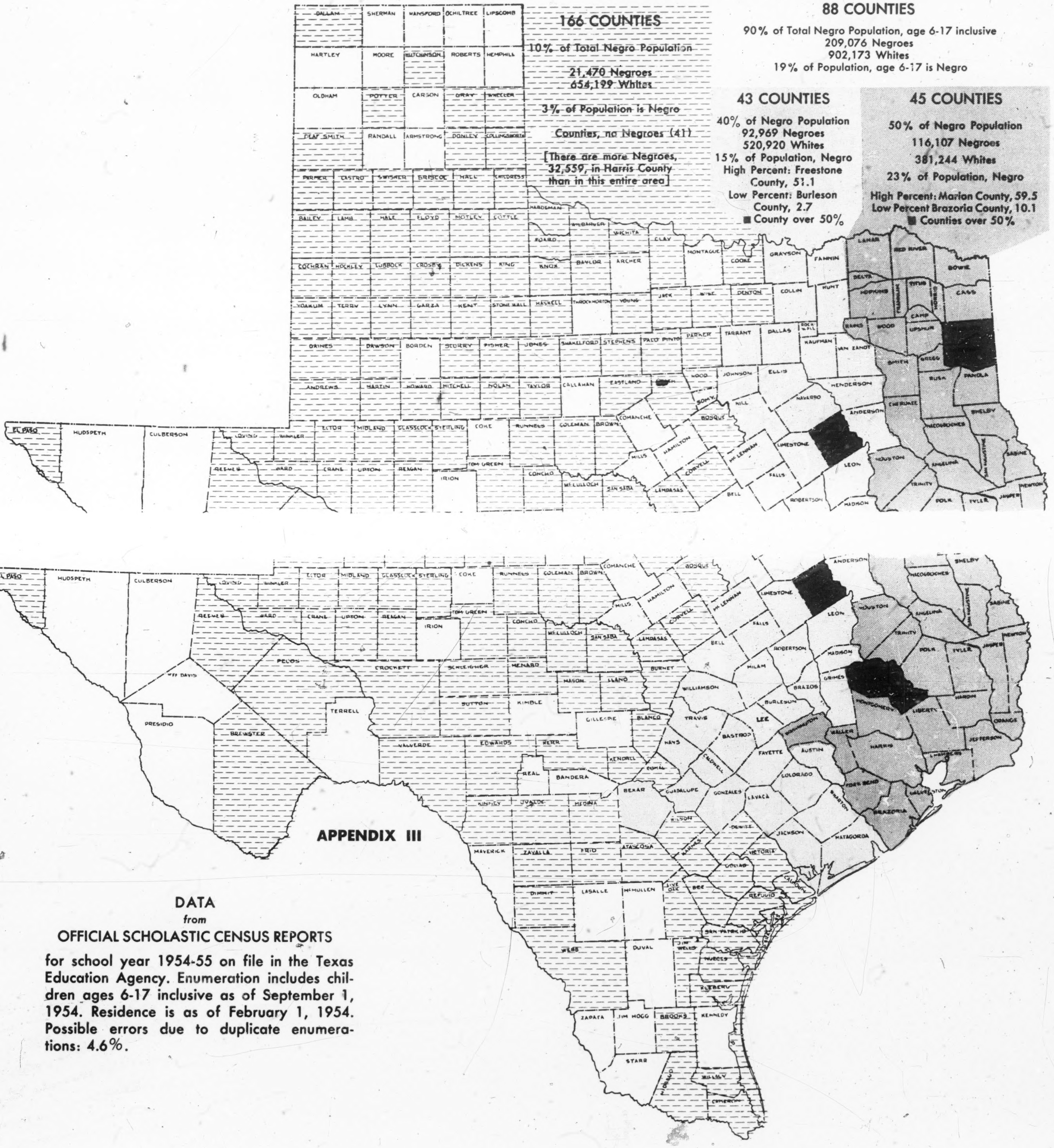
90% of Total Negro Population, age 6-17 inclusive
209,076 Negroes
902,173 Whites
19% of Population, age 6-17 is Negro

43 COUNTIES

40% of Negro Population
92,969 Negroes
520,920 Whites
15% of Population, Negro
High Percent: Freestone County, 51.1
Low Percent: Burleson County, 2.7
■ County over 50%

45 COUNTIES

50% of Negro Population
116,107 Negroes
381,244 Whites
23% of Population, Negro
High Percent: Marion County, 59.5
Low Percent Brazoria County, 10.1
■ Counties over 50%



APPENDIX III

DATA
from
OFFICIAL SCHOLASTIC CENSUS REPORTS

for school year 1954-55 on file in the Texas Education Agency. Enumeration includes children ages 6-17 inclusive as of September 1, 1954. Residence is as of February 1, 1954. Possible errors due to duplicate enumerations: 4.6%.

"1. In the event of legislative or Supreme Court direction, what, in your opinion, would be a reasonable minimum period of time for working out an integrated system in your district?"

In evaluating responses, a period of five years was arbitrarily set as a division. Thirty-six replied that a period of five years or less would be sufficient. Forty-two replied that a longer time than five years was necessary. Nineteen answers volunteered replies favoring a twelve year plan of integration (beginning with the first grade and adding a new grade each year). Ten of the Negro replies favored a five year or less program, while five thought a longer program was necessary. Two Negroes volunteered that they favored the twelve year plan.

"2. Do you consider the local problem more acute than the problem on a state-wide basis?"

Thirty-nine answered that the local problem was not more acute, as compared to forty-one replies that the local problem was more acute. The Negro replies were eleven affirmative, seven negative.

"3. Do you think that the established precedent of separate schools would seriously handicap the operation of integrated schools in your area?"

Sixteen responses did not believe the operation of integrated schools would be handicapped by the precedent of separate schools, but sixty-four did believe a handicap would exist. Eleven Negroes replied there would be no handicap, and seven replied there would be difficulty with an integrated system.

"4. (a) In the event of an integrated system, could all school buildings be utilized?"

Forty-eight responses believed all present school buildings could be used in an integrated program. Thirty-three thought that there would be a loss of use in an integrated system. Ten Negroes replied that all buildings could be used and seven thought that all buildings could not be used in an integrated system.

"4. (b) To what extent are present school buildings situated so that natural zones could be established that would continue to serve substantially the same student body in attendance at the same schools as under present operations?"

Forty replies stated that natural boundaries separated the two races and the schools for each race. Thirty-eight responded that no natural boundaries existed in their locality. Of the Negro educators, eleven replied that natural boundaries existed, while five answered that natural boundaries did not exist in their locality.

"4. (c) If any existing buildings would be unusable in an integrated program, estimate the present value of such buildings."

Forty answered that there would be no loss of buildings in operating an integrated school system. Thirty-eight answered that there would be some loss within their district. Of the Negro educators nine replied there would be no loss, while six answered that there would be some loss.

"5. How will an integrated public school system affect the school teachers in your area?"

Fifteen responded that there would be no affect on school teachers in their districts. Fifty-six answers believed the Negro teachers would be adversely affected by an integrated school program. Some replies thought white teachers in their districts would refuse to teach in an integrated school. The Negro replies seeing no affect within their districts numbered seven, while three feared an adverse affect.

"6. If the patrons of your district, both negro and white, were given free choice, what per cent would send their children to the same school now attended?"

Seventy-seven replied that 85% or more would continue attending the same school if they had free choice. Of this number fourteen answers were from Negro administrators. Only three answered that students in their districts would prefer attending integrated schools, and all three replies were by Negro administrators.

APPENDIX V

	County	Whites on 1954-1955 Scholastic Census	Negroes on 1954-1955 Scholastic Census	% of Negroes
1.	Anderson	4,127	2,473	34.5
2.	Andrews	1,885	30	1.6
3.	Angelina	6,645	1,398	17.4
4.	Aransas	1,154	14	1.2
5.	Archer	1,541	0	-----
6.	Armstrong	381	0	-----
7.	Atascosa	5,266	66	1.2
8.	Austin	1,977	789	28.5
9.	Bailey	1,994	60	2.9
10.	Bandera	725	0	-----
11.	Bastrop	2551	1,477	36.7
12.	Baylor	1,297	60	4.4
13.	Bee	4,831	134	2.7
14.	Bell	11,788	1,760	13.0
15.	Bexar	109,453	5,997	5.2
16.	Blanco	806	22	2.7
17.	Borden	176	0	-----
18.	Bosque	2,263	103	4.3
19.	Bowie	10,895	3,805	25.9
20.	Brazoria	13,514	1,523	10.1
21.	Brazos	5,437	2,132	28.17
22.	Brewster	1,460	9	.6
23.	Briscoe	688	64	8.5
24.	Brooks	2,336	3	.1
25.	Brown	4,994	140	2.7
26.	Burleson	1,791	1,063	37.6
27.	Burnet	1,794	34	1.9
28.	Caldwell	3,743	686	15.5
29.	Calhoun	2,933	151	4.9

	County	Whites on 1954-1955 Scholastic Census	Negroes on 1954-1955 Scholastic Census	% of Negroes
30.	Callahan	1,690	0	-----
31.	Cameron	34,957	117	.3
32.	Camp	1,153	822	41.6
33.	Carson	1,613	0	-----
34.	Cass	4,018	2,400	37.4
35.	Castro	1,458	11	.7
36.	Chambers	1,649	447	21.3
37.	Cherokee	4,905	1,980	28.8
38.	Childress	1,649	113	6.1
39.	Clay	1,861	14	.7
40.	Cochran	1,503	69	4.4
41.	Coke	826	0	-----
42.	Coleman	2,761	94	3.3
43.	Collin	7,950	1,062	11.8
44.	Collingsworth	1,692	172	9.2
45.	Colorado	2,827	1,134	28.6
46.	Comal	3,916	83	2.1
47.	Comanche	2,408	0	-----
48.	Concho	940	2	.2
49.	Cooke	4,783	186	3.7
50.	Coryell	3,518	179	4.8
51.	Cottle	919	36	3.8
52.	Crane	994	66	6.2
53.	Crockett	893	12	1.3
54.	Crosby	2,168	236	9.8
55.	Culberson	606	0	-----
56.	Dallam	1,638	12	.7
57.	Dallas	119,280	18,943	13.7
58.	Dawson	3,695	224	5.7
59.	Deaf Smith	2,456	7	.3
60.	Delta	1,416	219	13.4

County	Whites on 1954-1955 Scholastic Census	Negroes on 1954-1955 Scholastic Census	% of Negroes
61. Denton	7,220	567	7.3
62. De Witt	4,901	798	14.0
63. Dickens	1,380	64	4.4
64. Dimmit	3,505	13	.4
65. Donley	1,087	75	6.4
66. Duval	4,533	0	-----
67. Eastland	4,110	64	1.5
68. Ector	12,923	562	4.2
69. Edwards	541	1	.2
70. Ellis	6,570	2,875	30.4
71. El Paso	45,775	719	1.6
72. Erath	2,927	20	.7
73. Falls	3,191	1,978	38.3
74. Fannin	4,900	708	12.6
75. Fayette	3,492	982	21.9
76. Fisher	1,777	113	6.0
77. Floyd	2,291	166	6.8
78. Foard	742	90	10.8
79. Fort Bend	6,304	1,803	22.2
80. Franklin	783	126	13.9
81. Freestone	1,675	1,749	51.1
82. Frio	2,785	23	.8
83. Gaines	2,796	46	1.6
84. Galveston	21,504	5,036	19.0
85. Garza	1,397	45	3.1
86. Gillespie	2,137	0	-----
87. Glasscock	255	5	1.9
88. Goliad	1,302	151	10.4
89. Gonzales	3,357	960	22.2
90. Gray	5,727	159	2.7
91. Grayson	12,366	1,303	9.5

	County	Whites on 1954-1955 Scholastic Census	Negroes on 1954-1955 Scholastic Census	% of Negroes
92.	Gregg	10,895	3,739	25.5
83.	Grimes	1,911	1,563	45.0
94.	Guadalupe	5,228	814	13.5
95.	Hale	7,618	456	5.7
96.	Hall	1,770	228	11.4
97.	Hamilton	1,790	0	.....
98.	Hansford	989	0	.....
99.	Hardeman	1,769	181	9.3
100.	Hardin	4,268	791	15.6
101.	Harris	156,638	32,559	17.2
102.	Harrison	5,059	6,042	54.4
103.	Hartley	233	0	.....
104.	Haskell	2,892	161	5.3
105.	Hays	4,332	234	5.12
106.	Hemphill	803	0	.....
107.	Henderson	3,657	1,280	25.9
108.	Hidalgo	4,511	84	.2
109.	Hill	4,792	1,308	21.4
110.	Hockley	5,391	281	5.0
111.	Hood	1,054	18	1.2
112.	Hopkins	3,595	666	15.6
113.	Houston	2,511	2,110	45.7
114.	Howard	6,423	285	4.2
115.	Hudspeth	868	0	.....
116.	Hunt	6,188	1,436	18.8
117.	Hutchinson	7,511	116	1.5
118.	Irion	355	0	.....
119.	Jack	1,534	23	1.5
120.	Jackson	3,221	418	11.5
121.	Jasper	3,834	1,540	28.7
122.	Jeff Davis	415	0	.....

County	Whites on 1954-1955 Scholastic Census	Negroes on 1954-1955 Scholastic Census	% of Negroes
123. Jefferson	34,353	11,297	24.7
124. Jim Hogg	1,340	0	.....
125. Jim Wells	7,757	55	.7
126. Johnson	6,595	397	5.7
127. Jones	4,137	325	7.3
128. Karnes	3,724	143	3.7
129. Kaufman	4,288	2,222	34.1
130. Kendall	1,311	11	.8
131. Kenedy	142	0	.....
132. Kent	236	6	2.5
133. Kerr	2,602	104	3.8
134. Kimble	868	0	.....
135. King	169	12	6.6
136. Kinney	471	60	11.3
137. Kleberg	5,443	172	3.1
138. Knox	2,069	157	7.0
139. Lamar	6,644	1,692	20.3
140. Lamb	4,855	403	7.7
141. Lampasas	1,852	30	1.6
142. La Salle	2,800	0	.....
143. Lavaca	3,484	561	13.9
144. Lee	1,582	776	32.9
145. Leon	1,517	1,310	46.3
146. Liberty	5,368	1,591	22.9
147. Limestone	2,822	1,654	36.9
148. Lipscomb	725	0	.....
149. Liveoak	2,334	4	.8
150. Llano	904	2	.2
151. Loving	20	0	.....
152. Lubbock	22,164	2,001	8.3
153. Lynn	2,240	104	4.4

	County	Whites on 1954-1955 Scholastic Census	Negroes on 1954-1955 Scholastic Census	% of Negroes
154.	Madison	978	622	38.9
155.	Marion	896	1,314	59.5
156.	Martin	1,160	78	6.3
157.	Mason	893	10	1.1
158.	Matagorda	4,537	1,149	20.2
159.	Maverick	3,430	0	-----
160.	McCulloch	2,184	84	3.7
161.	McLennan	21,888	5,260	19.4
162.	McMullen	200	0	-----
163.	Medina	4,730	31	.6
164.	Menard	685	12	1.7
165.	Midland	9,143	897	8.9
166.	Milam	4,249	1,199	22.0
167.	Mills	1,024	0	-----
168.	Mitchell	2,570	192	6.9
169.	Montague	3,515	0	-----
170.	Montgomery	4,680	1,541	24.8
171.	Moore	3,562	0	-----
172.	Morris	1,816	1,018	35.9
173.	Motley	633	66	9.4
174.	Nacogdoches	4,218	3,278	36.0
175.	Navarro	6,076	2,475	28.9
176.	Newton	1,604	996	38.3
177.	Nolan	4,083	170	4.0
178.	Nueces	45,914	1,748	3.7
179.	Ochiltree	1,114	0	-----
180.	Oldham	653	0	-----
181.	Orange	10,179	1,209	10.6
182.	Palo Pinto	3,694	125	3.3
183.	Panola	2,542	1,809	41.6
184.	Parker	4,768	89	1.8

	County	Whites on 1954-1955 Scholastic Census	Negroes on 1954-1955 Scholastic Census	% of Negroes
185.	Parmer	1,867	27	1.4
186.	Pecos	2,699	35	1.3
187.	Polk	2,568	1,112	30.2
188.	Potter	19,370	1,010	4.9
189.	Presidio	1,536	0	-----
190.	Rains	729	114	13.5
191.	Randall	1,316	0	-----
192.	Reagan	780	41	5.0
193.	Real	480	0	-----
194.	Red River	3,155	1,173	27.1
195.	Reeves	3,842	133	3.3
196.	Refugio	2,522	275	9.8
197.	Roberts	197	0	-----
198.	Robertson	2,439	2,141	46.7
199.	Rockwall	938	539	36.5
200.	Runnels	3,437	106	3.0
201.	Rusk	5,439	3,154	36.7
202.	Sabine	1,336	518	27.9
203.	San Augustine	1,222	844	40.8
204.	San Jacinto	666	967	59.2
205.	San Patricio	12,143	190	1.5
206.	San Saba	1,599	9	.6
207.	Schleicher	654	40	5.8
208.	Scurry	4,236	93	2.1
209.	Shackelford	840	16	1.9
210.	Shelby	3,623	1,622	30.9
211.	Sherman	574	0	-----
212.	Smith	11,385	558	32.8
213.	Somervell	493	0	-----
214.	Starr	5,053	0	-----
215.	Stephens	1,646	60	3.5

	County	Whites on 1954-1955 Scholastic Census	Negroes on 1954-1955 Scholastic Census	% of Negroes
216.	Sterling	308	2	.6
217.	Stonewall	681	36	5.0
218.	Sutton	895	15	1.6
219.	Swisher	2,318	47	2.0
220.	Tarrant	74,977	8,904	10.6
221.	Taylor	13,248	594	4.3
222.	Terrell	656	0	-----
223.	Terry	3,122	81	2.5
224.	Throckmorton	634	0	-----
225.	Titus	3,207	733	18.6
226.	Tom Green	11,538	621	5.1
227.	Travis	27,111	4,761	14.9
228.	Trinity	1,524	658	30.1
229.	Tyler	2,121	705	24.9
230.	Upshur	2,965	1,533	34.1
231.	Upton	1,598	74	4.4
232.	Uvalde	4,307	44	1.0
233.	Val Verde	4,440	80	1.8
234.	Van Zandt	4,086	451	9.9
235.	Victoria	8,502	733	7.9
236.	Walker	1,786	1,865	51.1
237.	Waller	1,367	1,178	46.29
238.	Ward	2,870	39	1.3
239.	Washington	2,333	1,778	45.2
240.	Webb	16,089	5	.1
241.	Wharton	7,504	2,087	21.8
242.	Wheeler	2,104	66	3.0
243.	Wichita	17,203	1,219	6.6
244.	Wilbarger	3,490	382	9.9
245.	Willacy	5,490	21	.4
246.	Williamson	6,851	1,357	16.5

County	Whites on 1954-1955 Scholastic Census	Negroes on 1954-1955 Scholastic Census	% of Negroes
247. Wilson	3,634	95	2.5
248. Winkler	2,415	49	2.0
249. Wise	3,096	34	1.1
250. Wood	3,932	744	15.9
251. Yoakum	1,465	1	.1
252. Young	3,405	24	.7
253. Zapata	1,035	0	-----
254. Zavala	3,293	26	.8
TOTALS	1,556,372	230,546	12.9

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Nos. 1, 4, 5

Supreme Court of the United States

OCTOBER TERM, 1954

Brown, et al., *Appellants*
v.
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Appellees
} No. 1

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} No. 5

ON SECOND RE-ARGUMENT

BRIEF OF
AMERICAN VETERANS COMMITTEE, INC. (A.V.C.)
Amicus Curiae

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November 12, 1954

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No. 5

ON SECOND RE-ARGUMENT

BRIEF OF
AMERICAN VETERANS COMMITTEE, INC. (A.V.C.)
Amicus Curiae

PRELIMINARY STATEMENT

The American Veterans Committee, Inc. is a nation-wide organization composed of veterans who served honorably in the Armed Forces of the United States during World War I, World War II, or the Korean Conflict. Our interest in the Public School Segregation Cases was explicated in the briefs we filed on the previous arguments in the 1952 and 1953 Terms.

On May 17, 1954, this Court ruled that racial segregation in public schools violates the Constitutional guarantee of equal protection expressed in the Fourteenth Amendment, and implied in the Fifth Amendment, to the Constitution. *Brown* v. *Board of Education,* 347 U. S. 483; *Bolling* v. *Sharpe,* 347 U. S. 497. The cases were continued for further argument on Questions 4 and 5 set forth in this Court's order of June 6, 1953 (345 U. S. 972, 973).

THE FRAMEWORK WITHIN WHICH THE QUESTIONS SHOULD BE ANSWERED

It is, of course, not appropriate for this Court to try to anticipate the legality of every detail of every desegregation plan which, in the context of the particular pressures and attitudes influencing their members, each of the thousands of school boards may evolve in administering their school systems so as to comply with the requirements of the Constitution. *Cf. United States* v. *Paramount Pictures,* 334 U. S. 131, 163-164 (1948); *Nebraska* v. *Wyoming,* 325 U. S. 589, 616-617 (1945).

On the other hand, we think this Court should indicate in its decrees the principles underlying any method of desegregation, compliance with which will satisfy the Constitutional prohibition against racial segregation. This Court's order for reargument on Questions 4 and 5 has stimulated widespread interest in knowing what desegregation methods this Court would approve. Moreover, it is entirely possible that if this Court simply remands the cases "for further proceedings" without indicating the guide lines of acceptable desegregation methods, the way would be open for prejudiced school boards to remit each applicant for nonsegregated education, despite the *Brown* decision, to the arduous, tortuous and time-consuming process of prosecuting a separate suit in which the court of first instance would take over the administrative tasks properly belonging to the school board. That, indeed, is what the Attorney General of Florida urges in his Brief, pp. 61-65, sec. II. But that course might in some areas

excise the meaning from the Constitutional right, and would in some other areas open the door to a chaotic pulling-and-tugging in which the lower courts would be hard put to insist on applying the law rather than personal judgment concerning the community's "willingness to accept" the requirements of equal justice under law.

In our opinion, the lode-star in answering Questions 4 and 5 should be the principles inherent in this Court's ruling of May 17, 1954—(1) that under our Constitution all children, of any racial ancestry, including both those now in the public schools and those who may come into the public schools in the future, should and must be permitted to enter the same public schools which children labeled "white" could enter, and (2) that no public school authorities may, in their administration of the public school system, impose any distinctions or accord different treatment, by segregation or otherwise, on the basis of race, color or ancestry.[1]

---

[1] That ruling blends with the body of the law. This court has uniformly and repeatedly held that the right to be free from racial discrimination by governmental authority is a "personal" right, not one to be merged with those of all others of the same race and balanced against the claims of all white persons averaged as a group. *Henderson* v. *United States*, 339 U.S. 816, 825-826 (1950); *Shelley* v. *Kraemer*, 334 U.S. 1, 22 (1948); *Mitchell* v. *United States*, 313 U.S. 80, 97 (1941); *Buchanan* v. *Warley*, 245 U.S. 60, 80 (1917); *McCabe* v. *Atchison, T. & S. F. Ry. Co.*, 235 U.S. 151, 161-162 (1914); *Missouri ex rel. Gaines* v. *Canada*, 305 U.S. 337, 351 (1938). The Constitutional requirement of equal protection of the laws applies to any person subject to group discrimination because of his identifiable racial or ethnic origin. *Hernandez* v. *Texas*, 347 U.S. 475 (1954). Since public education on a segregated basis is not equal education, he is entitled to such education on an unsegregated basis. *McLaurin* v. *Oklahoma State Regents*, 339 U.S. 637 (1950); *Brown* v. *Board of Education*, 347 U.S. 483 (1954); *Bolling* v. *Sharpe*, 347 U.S. 497 (1954). Moreover, he is entitled to receive such equal education, and it must be provided for him, "as soon as" it is provided for the white person. *Sipuel* v. *Board of Regents*, 332 U.S. 631, 633 (1948). These decisions were epitomized when this Court unanimously characterized the right to secure public education without racial discrimination as "personal and present." *Sweatt* v. *Painter*, 339 U.S. 629, 635 (1950).

SUMMARY OF ANSWERS TO THE QUESTIONS

The best way to take racism out of the schools (where it "has no place") and to let the schools merge into the neighborhood (where racial agglomeration may reflect voluntary association), is by assigning children on the basis of geographic school boundaries based solely on residential proximity and accessibility to the school. But, in the absence of special considerations, the Constitution does not necessarily compel a school board either to require such boundaries or to permit or prevent choice of school by the child. If, and so long as, racial factors are not involved, the method used is for the school board, not a court, to determine.

As to children now in school, the school board's obligation to administer orderly school programs without future regard to their race can be satisfied by a second method—i.e., by affording to each such child the opportunity to obtain, upon application, admittance or transfer to, and education in, a school near his residence without being subject to racial distinctions. This voluntary application method permits adjustment to desegregation which, without d nying any child's Constitutional rights, will lean heavily on the readiness of the local community and, in areas of diffidence to voluntary mixing, will permit more gradual desegregation than would the use of compulsory school boundaries. The essence of this voluntary method is that the child's right to admission to any school may not be denied on the basis of race; the process of adjustment to a nonsegregated school system will begin and be effected as such applications are made.

Any other method of gradual adjustment to a nonsegregated system is either not permissible or inappropriate under the judicial process. In any event, this Court should specifically reject the notion that, until such time as the "hard core of public opinion has softened to the extent that there can be at least some measure of acceptance on the part of a majority of the people," school boards may

reject applications for equal education. Adoption of such a proposal would be worse than reinstatement of the "separate but equal" doctrine.

With respect to students new to a particular school, the first alternative (assignment according to residential boundaries) will, but the second alternative (assignment on the basis of a voluntary application) will not, comply with the Constitution. The latter method implies that in the absence of an application, race or color will determine the assignment of the student. But by applying race or color in the assignment of new students to a school, the structure of segregation in public education will be strengthened and entrenched, instead of gradual adjustment occurring "from existing segregated systems to a system not based on color distinctions." To prevent such addition to the structure of racial segregation in public education, the school authorities should be required to assign new students either on the basis of normal residential school boundaries or, where there are no such boundaries, on the basis of reasonable criteria which do not include race or color. In making assignments not based on geographic boundaries, the school board may, if it wishes, permit the student to choose which school he will attend, but may not, in the absence of such choice by the student, assign him on the basis of his race or color or require him to file an application as a prerequisite to obtaining unsegregated education.

The decrees should become effective at the beginning of the school term immediately following the date of the decrees, but the court of first instance should be permitted to allow an additional school term if the school authorities show that unusual conditions involving technical and administrative difficulties require additional time for effective desegregation.

It is not clear whether this Court, in prescribing the time when the decree embodying these principles shall become effective, may permit extensive delay where such

delay would destroy Constitutional rights which are personal and present. In any event, the public interest does not require extensive delay.

As shown by experience in many areas of daily life, the fears that desegregation will cause widespread violence are largely wraiths and myths. Such experience also shows that rapid desegregation is often smoother and easier than segmentalized or gradual desegregation. The lag in the law, the inhibiting effect of mores and extra-legal pressures, the accumulated racial patterns of residence, and other factors, will provide ample "gradualism" without judicial espousal of "gradualism" as a legal doctrine. Isolated instances of hooliganism, stimulated by the current uncertainty as to the nature of this Court's decree, are not representative. In any event, the possibility of local friction is legally irrelevant in determining Constitutional rights.

This Court should not specify all details, either itself or through a special master, but should in its decrees include the principles mentioned above, enjoin the school authorities from considering race in administering school programs, and require the courts of first instance to deal initially with specific problems presented either by the school authorities or by those claiming deprivation of Constitutional rights under the general principles of this Court's decree.

This Brief suggests specific terms for inclusion in this Court's decree.

QUESTION 4

"4. Assuming it is decided that segregation in public schools violates the Fourteenth Amendment

(a) would a decree necessarily follow providing that, within the limits set by normal geographic school districting, Negro children should forthwith be admitted to schools of their choice, or

(b) may this Court, in the exercise of its equity powers, permit an effective gradual adjustment to be brought about from existing segregated systems to a system not based on color distinctions?"

I. ANALYSIS OF METHODS TO BRING SEGREGATED SCHOOL SYSTEMS INTO CONFORMITY WITH THE CONSTITUTION

A. As to children now in a segregated school

In so far as concerns children who are now in a segregated school, there are two possible approaches to bringing the school system into conformity with the Constitution while at the same time not denying to any individual his personal and present rights under the Constitution.

(1) Normal geographic school districting

This Court's rulings of May 17, 1954, say that the many children who are now in segregated schools are being denied their Constitutional rights to equal education. This does not mean, and it is not our position, that school boards are under a constitutional mandate to go out looking for interracial school populations.

The duty of the school boards, we think, is solely to maintain orderly school programs without regard to race or color, to refrain from denying to any child admission into any school, and to refrain from treating any person in the school system differently, at any time, on the basis of race or color.

One way in which the school boards can fulfill this duty is by prescribing geographical school boundaries based,

not on race, but on the students' residential proximity and accessibility to the school, and by requiring all students within such boundaries to go to that school. The compulsory school attendance laws would thus simply cause the school to reflect the composition of the neighborhood. If the neighborhood is racially mixed, the school will be racially mixed; if the neighborhood population is all-white or all-colored, the school population will have the same hue.

We think, indeed, that this is, from an educational and community standpoint, the desirable way to end the racial aspects of public education with respect to the students. It would shift the issue of racial composition from the public schools, where, as this Court said in the *Brown* case, it "has no place," to the neighborhood, where racial agglomeration, if not imposed by governmental or other outside influences, may simply reflect the tendencies of voluntary association. Children who live and play in the same neighborhood would study together in the same school.

Moreover, assigning children to schools according to their residence within normal geographic school zones is the easiest way to operate a normal public school system without racial distinctions as to pupils. It is a factual, impersonal, and traditional criterion in administering public schools. Not only does it reflect the neighborhood pattern, but it also permits easier programming of school and community needs, and it avoids the imbalance between schools which results from unrestrained migration of pupils.

Nevertheless, in the absence of special considerations, we do not contend that the Constitutional guarantee of equal protection of the laws necessarily requires that boards of education be compelled to admit all children into schools solely on geographic basis, or that the boards be compelled to permit, or be enjoined from permitting, each child to select or transfer to any public school he wishes to attend. *Cf. Pierce* v. *Society of Sisters*, 268 U. S. 510 (1925); *Farrington* v. *Tokushige*, 273 U. S. 284, 298 (1927). The school board may permit children to go to

any school within the public school system, as in Baltimore, Maryland, or require them to go to the nearest school within a rigidly prescribed residence zone, as in some other cities. The choice of method is, in general, a matter of public school administration which is committed to the sound judgment of the school officials. So long as such judgment applies equally to both white and colored children similarly situated and is not based on racial factors, it is not a matter of constitutional concern.

(2) Voluntary transfer to unsegregated schools

The second way that the school boards could afford to each child then in a school his Constitutional right not to be subjected to compulsory racial segregation in public education, is by permitting him to continue in that school or to transfer to another school, the board acting solely on the basis of applicable scholastic considerations without regard to race. If, as in Baltimore, there are no prescribed neighborhood school boundaries, (except for students at a few overcrowded schools), the student could apply to transfer to any school within the school system. In cities or places where neighborhood school boundaries (which are not based on race) are prescribed, his application to transfer would, of course, be limited to the school within whose boundaries he resides.[2]

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[2] Compare the similar approach adopted by the Delaware State Board of Education on August 26, 1954, in its memorandum *Some Items and Suggestions Relative to Desegregation Plans*, mimeographed, p. 3:

> "If a school district has more than one building serving a given grade, attendance at a particular school could be decided by choice of the student provided, in the event of insufficient space at a particular school, preference should be given students residing nearest the school in question.
>
> "The State Board of Education believes that constitutional requirements are met either by integration within the fixed attendance areas or integration based on a single attendance area wherein freedom of choice is exercised to the extent that physical facilities will allow. The decision as to which type of attendance plan is established in a school district ultimately rests with the local board of education."

True, it might be said that to require a child to file an application in order to get the equal education to which he is Constitutionally entitled, is itself to impose a burden on the child, and that the school board, not the child, ought to initiate what must be done to provide equality of education in the Constitutional sense. However, in view of the considerable administrative adjustments and time that would be required to turn the massive ship of segregated public schools into its newly charted course, it is not unreasonable to ask those who are now in that boat to exercise their "personal" Constitutional right by applying for admittance to a school wherein they will be admitted and educated without racial segregation or other racial distinctions.

One advantage of this voluntary application method is that, without denying the Constitutional rights of any individual, the adjustments made under it would lean heavily on the state of readiness that each local community may have for integration. Thus, where there is either inertia, or a personal or scholastic reason which leads children to desire to remain in their school, or, in some areas, a diffidence to voluntary mixing of school children heretofore separately educated, the method here suggested would permit a more gradual integration than would occur where compulsory school boundaries are invoked to aid integration. This, indeed, has been the experience in several of the public school systems where students were permitted, in September 1954, to attend the school nearest their home, or, subject to the priority of neighborhood children to attend particular schools which are overcrowded, any school they chose to attend. *E.g.*, in Baltimore, Md., where 39 percent of the 141,000 children are Negro, only about 2.5 percent of the total Negro enrollment chose to go to schools formerly attended only by white children; in Springfield, Mo., almost half of the Negro children chose to remain in the school they previously attended; in Wichita, Kans., only small numbers of Negroes chose to attend schools which formerly

served only white students. *Southern School News*, vol. 1, no. 2, pp. 8, 10, 16 (Oct. 1, 1954).

On the other hand, one of the disadvantages of the voluntary application method would be that it permits substituting the irresponsibility and uncertainty of "mores" (and perhaps extra-legal social or economic pressures) in lieu of orderly application of the compulsory school laws in the context of Constitutional requirements.

The essence of this voluntary application method is that any child now in a segregated school should have the right to apply at any time for admission to a school, at the beginning of a school term, on the basis of proper scholastic criteria which do not include race or ancestry, and that the school board must be enjoined from denying his application solely on the basis of race, color or ancestry. Thus, the process of adjustment to a nonsegregated school system will begin and be effected as such applications are made and granted. Whatever problems may arise can and should be dealt with then.

Every other method of "gradual" adjustment to a nonsegregated system which we have considered (*i.e.*, which does not require or permit education in a school near one's residence without regard to race or ancestry) would either violate the personal and present right of particular persons, or provide prejudiced boards with an excuse for interminably dragging their heels, or both, or are not, we think, appropriate for judicial action. Thus, procedures such as integrating only a limited or specific number of schools, or grades, per year, would disregard the rights and needs of individual children in other schools, or grades, who seek nonsegregated education. Moreover, judicial authorization of such arbitrary methods would encourage evasiveness and procrastination in conforming to the requirements of the Constitution. Also, clearly, gradual desegregation which is based solely on prior change of community attitudes toward desegregation, through use of such techniques as intercultural education and mass

communication, training of teachers, administrators and police, etc., not only is disregardful of the present rights of the children seeking unsegregated education but also is beyond the scope of the litigious process and of the judicial power.

In any event, we urge that this Court totally reject the notion advanced by the Attorney General of Florida (Brief, item (5) on p. 63) that the school board be allowed to refuse a Negro child's application for admission to non-segregated education if there is "such a strong degree of sincere opposition and sustained hostility on the part of the public" [apparently he means that portion which is prejudiced against Negroes] as to lead the school authorities to believe that approval of the application would cause "a disruption of the school system" or create "emotional responses among the children which would seriously interfere with their education." That proposal, keyed as it is to criteria of the vaguest sort, means only that the guardianship of Constitutional guarantees should be surrendered to prejudice, mob hostility, and the thoughtlessness of immature children emotionally titillated by parental racism.

Furthermore, such a proposal would be worse than reinstatement of the "separate but equal" doctrine. To prove that the "hard core of public opinion has softened to the extent that there can be at least some measure of acceptance on the part of a majority of the people," which is what the Attorney General of Florida says a Negro child must prove before he can obtain equal education (Brief, p. 43), would be infinitely more onerous than to prove inequality of physical facilities. Such a proposal would relegate Constitutional rights to popularity polls in which the deciding ballots would be cast by those who are most biased and least law-abiding. Indeed, if that proposal were adopted, this Court's rulings of May 17, 1954 that racial segregation in public education is unconstitutional would become, in the words of the late Mr. Justice Jackson,

"only a promise to the car to be broken to the hope, a teasing illusion like a munificent bequest in a pauper's will." *Edwards* v. *California*, 314 U. S. 160, 186 (1941).[3]

In any event, the fears which underlie the proposal of the Attorney General of Florida are not legally relevant, and even if they were, part III of our Brief points out that there is no substantial basis for them.

B. As to children who enter a particular school for the first time

Somewhat different, and special, considerations are applicable to students who are ready to enter a particular school for the first time (either by virtue of beginning public school education, transfer of residence, or graduation from a lower level school). The first alternative—

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[3] We cannot over-emphasize the importance of fulfilling the promise of May 17, 1954. The whole world has been discussing it. Typical of World opinion this side of the Iron Curtain (except in South Africa where *Die Transvaler* deplored the decisions) was the editorial comment in *Journal d'Égypte* (Cairo, Egypt, May 30, 1954): "This human victory which America has just won over herself brings her a world wide prestige far superior to any that a demonstration of her military or financial strength might have brought." The *Berlingske Aftenavis* of Copenhagen, Denmark, said that this Court's decisions of May 17 were a "victory . . . for the United States as a pioneer for human freedom and equality." The conservative *Yorkshire Post* in London predicted (May 20, 1954) that the decisions "will help stem Communism among the colored peoples of Asia and other parts of the world." The *Statesman* of New Delhi, India, emphasized (May 20, 1954) the contrast between this Court's decisions and the *apartheid* madness of Prime Minister Malan in South Africa, but cautioned "it remains to be seen how and when the decision will be enforced."

On the other hand, Soviet propaganda has stressed "how small the practical value" of the decisions is, and that this Court, by this very reargument, "prepares for itself the way to a retreat." Article by S. Kondrashov, section A, *Izvestia* (June 23, 1954). The Milford, Delaware, incident served as a further opportunity for Moscow to charge that this Court's ruling of May 17 "was only meant for publicity" and that the authorities "had no intention of enforcing it." U. S. Information Agency report, Oct. 6, 1954.

assigning them on the basis of normal geographic school boundaries—would satisfy the Constitution as to them just as it would for children now in school. But unlike the case of children now in the school, to apply the second alternative—the voluntary application method—to new students would probably tend to strengthen and further entrench segregation in public education. This is because the method of voluntary application implies that in the absence of an application the student would be assigned to a public school on a racial basis.

It is one thing to say that, in light of the considerable administrative adjustments and time necessary to shift to wholly nonsegregated operation, a school board may require students who were assigned to that school prior to this Court's decrees in these cases, even though on a racial basis, to continue to attend that school unless they voluntarily apply for transfer to another school. It is quite different to say that a school board may, *after this Court's decrees,* assign children to a school on the basis of race who have never previously been in that school.

Insofar as concerns the student who is ready to enter a particular school for the first time, if the school board assigns him to a school on the basis of his race and for the purpose of maintaining racial uniformity in the particular school, rather than exclusively on the basis of proper scholastic criteria (age, educational level, residential proximity and accessibility to the school, etc.) which take no account of race, it is at once apparent that he is being subjected to unconstitutional racial distinctions.

Even more important, it is also apparent that such action *extends and further entrenches* the structure of racial segregation in education and thus makes it more difficult, rather than easier, to change "from existing segregated systems to a system not based on color distinctions."

To prevent public education from miring deeper in the bog of unconstitutional racial segregation, the school board must be enjoined from imposing *additional* segregation.

This does not mean that the school board may not permit the student, where normal geographic boundaries are not prescribed, to choose which school he will attend. But it does mean that in the absence of such choice by the student, the school board may neither assign him on the basis of his race or color, nor require him to file an application as a prerequisite to obtaining unsegregated education.

Accordingly, in order to effect even the minimum compliance with the Constitution, this Court should, in its decrees:

(a) permit the school authorities to assign children to school in accordance with normal geographic school boundaries which are based on residential proximity and accessibility to the school, and not on race;

(b) prescribe that the school authorities, with respect to children then in school, shall not on the basis of race or color:

(i) either deny admission to any student who applies to transfer to a school within the normal residential school boundaries of which he lives;

(ii) or, if no boundaries are prescribed for a school, deny admission to any student who applies to transfer to that school;

(c) prescribe that the school authorities, with respect to any child who will, after the date of this Court's decree, be new to any particular school (either by beginning public school education, transfer of residence or graduation from a lower level school):

(i) shall assign such student to the school within the normal residential boundaries of which he lives, or

(ii) if no boundaries are prescribed, shall assign such student to a school on the basis of reasonable criteria, as determined by the school authorities, which do not include the factor of race. In making such as-

signments, the school board may, if it wishes, permit the student to choose which school he will attend, but shall not, in the absence of such choice, assign him on the basis of race or color, or require him to file an application as a prerequisite to obtaining unsegregated education.

(d) enjoin the school authorities from segregating or otherwise according different treatment to any person within a school on the basis of race or color. *McLaurin* v. *Oklahoma State Regents,* 339 U. S. 637 (1950).

The adoption of these principles will, we believe, provide a normal and impersonal method (1) for gradual desegregation which (2) recognizes the Constitutional rights of the children, and (3) affords no excuse by which prejudiced school boards may evade or interminably delay compliance with the Constitution.

II. WHEN THE DECREES SHOULD BECOME EFFECTIVE

In our opinion the decrees here suggested should be effective as of the beginning of the school term immediately following the date of the decrees, with provision for delay for an additional school term where the school board proves to the court of first instance that unusual technical or administrative difficulties require such delay.

Whether the equity power of this Court is sufficient to allow more extensive time for gradual adjustment to a nonsegregated system if more time is deemed necessary in the public interest is not entirely free from doubt. Of course this Court has power to consider, and has considered, the exigencies of the public interest in prescribing the time for compliance with its decrees. See 28 U.S.C. (1952 ed.) sec. 2106; *Hecht Co.* v. *Bowles,* 321 U.S. 321, 329-330 (1944); *Georgia* v. *Tennessee Copper Co.,* 206 U.S. 230, 239 (1907); *ibid.,* 237 U.S. 474 and 678 (1915); *ibid.,* 240 U.S. 650 (1916); *United States* v. *American Tobacco Co.,* 221 U.S. 106, 185, 187-188 (1911).

But all of these cases involved issues and rights other than the "personal and present" constitutional right to equal protection of the law. In those cases, delay in effectuating the decree did not forever destroy a person's civil right to have equal access to something which he could get only within a limited time or not at all. The present cases, on the other hand, involve injury to the children which "may affect their hearts and minds in a way unlikely ever to be undone." *Brown* v. *Board of Education,* at p. 494. To delay fulfillment of, and thereby to destroy, their Constitutional rights seems inconsistent with the equity function to protect the very Constitutional right (freedom from governmentally imposed racial discrimination) which was "the matter of primary concern" for the Framers of the Fourteenth Amendment. *Shelley* v. *Kraemer,* 334 U.S. 1, 23 (1948); *Hurd* v. *Hodge,* 334 U.S. 24, 32 (1948); *Strauder* v. *West Virginia,* 100 U.S. 303, 306, 310 (1880); *Slaughter-House Cases,* 83 U.S. (16 Wall.) 36, 70-72, 81 (1873); *Railway Mail Ass'n.* v. *Corsi,* 326 U.S. 88, 94 (1945).

In any event, what we say (see Part III of this Brief) is that the public interest does not require extensive delay in making effective the terms of the decrees as suggested above. We believe that the period between the issuance of the decrees and the opening of the next school term should provide ample time to make necessary changes in records and facilities, personnel assignments, and other purely administrative changes to a non-racial basis. Such administrative adjustments did not prove great obstacles in the desegregation programs of the relatively complex school systems of Washington, D. C., Baltimore, Md., Topeka, Kans., Wilmington, Dela., the States of New Jersey, Indiana, Illinois, and the many other areas where public school desegregation has been proceeding smoothly, effectively, and rapidly.

There may be unusual technical or administrative difficulties because of which one or some school boards may

need additional time to change from a segregated to a nonsegregated school system.[4] The decrees of this Court should therefore authorize the court of first instance to allow additional time for such adjustment, but not in excess of one school term at any one time—such additional time to be granted only when the court of first instance, in hearings at which the school authorities have the burden of proof by substantial and probative evidence, is convinced that because of unusual conditions involving technical or administrative difficulties such additional time is clearly needed to enable effective transition to a nonsegregated school system. Each such further extension of time for an additional school term should be predicated on the facts and circumstances then existing as proved by the school authorities in subsequent hearings before the court of first instance.[5] Opposition and hostility by part of the community to desegregation of schools should not

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[4] *E.g.*, in Dover, Delaware, it may be necessary to consolidate the separate board which administers the new high school for Negroes with the Dover Board of Education which administers the other public schools in Dover, both those for white students and those for Negro students. *Southern School News*, Vol. 1, No. 1, p. 3, col. 4 (Sept. 3, 1954). In some cases, also, revision of school district boundaries, to apportion children between schools on the basis of residence proximity and accessibility, may require legislative action. *Ibid.* Col. 5.

[5] It is of course proper and fair that the school authorities (who administer the school system, formulate its programs and schedules, have better opportunity to know the facts, and claim an exemption from the requirement of the law), should have the burden of proving why any child desiring nonsegregated education should be denied that right beyond the beginning of the next school term, and of showing how its plans for more gradual adjustment to a nonsegregated system could be justified under the Constitution and in the light of pertinent circumstances. See 9 Wigmore on Evidence (3rd ed.), sec. 2486, p. 275, and cases cited, n. 3, including 1953 Supplement. See also *United States* v. *Fleischman*, 339 U.S. 349, 360-361 (1950); *Commercial Corp.* v. *New York Barge Co.*, 314 U.S. 104, 111 (1941); *Schnell* v. *The Vallescura*, 293 U.S. 296, 304 (1934); *Rossi* v. *United States*, 289 U.S. 89, 91-92 (1933); *Selma, Rome & Dalton R. Co.* v. *United States*, 139 U.S. 560, 566 (1891).

in themselves be considered as constituting unusual conditions warranting delay in complying with the court's decrees.

III. "GRADUALISM" IS NOT NECESSARY TO ACHIEVE SMOOTH AND EFFECTIVE DESEGREGATION

There need be no fear that a decree such as we here urge will produce widespread friction and violence. Experience in many areas of daily life, including the administration of public schools, demonstrates that smooth adjustment to nonsegregated operation, in the South as well as the North, and on a large as well as on a small scale, can be accomplished rapidly. See Clark, *Desegregation: An Appraisal of the Evidence*, 9 Journal of Social Issues, No. 4, pp. 1-76 (1953); Time Magazine, *The U.S. Negro, 1953*, pp. 55-58 (May 11, 1953) (reprinted, 99 Cong. Rec., A5384-87); *ibid.*, *When the Barriers Fall*, p. 40 (Aug. 31, 1953); Wertham, *Psychiatric Observations on Abolition of School Segregation*, 26 J. of Educ. Soc. 333 (March 1953); Bustard, *The New Jersey Story: The Development of Racially Integrated Public Schools*, 21 J. of Neg. Ed. 275 (Summer, 1952).

Indeed, such adjustment is often facilitated by desegregating as rapidly as the necessary changes can be made in records, facilities, personnel, and other purely administrative affairs to a non-racial basis. Segmentalized "gradual" desegregation which is slower than that does not necessarily make the transition easier. On the contrary, it tends to stimulate an atmosphere of uncertainty and resentments, with the result that those who seek desegregation accelerate their efforts to end injustice, while those who wish to continue segregation intensify their efforts to evade, obstruct, and resist desegregation. Such "gradualism" thus heightens, rather than diminishes, both overt and latent tensions. A vivid illustration is the recent experience of the District of Columbia Recreation Board. During 1952 and 1953, that Board's efforts at gradual

and segmentalized desegregation, which ended segregation at a dozen or so individual playgrounds, visibly heightened racial tensions in Washington as the pro- and anti-segregationists pushed their views. See Phineas Indritz, *Racial Ramparts in the Nation's Capital*, 41 Georgetown L.J. 297, 327 (March 1953). But after the Recreation Board on May 18, 1954, abruptly abolished all racial distinctions simultaneously in all its facilities (over 100), racial tensions in public recreation calmed and ceased.

That large numbers of people are affected, that the proportion of Negroes involved may be substantial, and that the desegregation is relatively rapid, are not, *per se*, major obstacles to an effective and peaceful transition to a non-segregated community. The recent desegregation of the vast military establishment, as rapidly as administrative adjustments could be made, has been effected smoothly. Nichols, *Breakthrough on the Color Front* (1954); 99 Cong. Rec. A1982-84; *Freedom to Serve*, Rept. of President's Committee on Equality of Treatment and Opportunity in the Armed Services (Govt. Printing Off., May 22, 1950); *Integration in the Armed Services*, Progress Report of the Civilian Assistant to the Secretary of Defense (Aug. 31, 1954). "There are no longer any all-Negro units in the Services". *Ibid.*, p. 6.

After this Court's decision in *District of Columbia* v. *John R. Thompson Co., Inc.*, 346 U.S. 100 (June 8, 1953), racial discrimination in the restaurants of a large city having a "southern exposure" ended overnight, without friction or disturbance among the thousands of people who daily use them. Not long thereafter all remaining racial discrimination ceased in District of Columbia theatres and all publicly administered recreational facilities, and the many thousands who now sit and play next to persons of another race display no tremor or qualm.

During the past nine years (since 1945), more than 60 million Americans have obligated themselves, through their legislative representatives in 12 states and at least

32 municipalities, to abstain from racial discrimination in employment. Management has generally responded favorably and many unions are extending the principle of nondiscrimination, including nonsegregation. Davis, *Negro Employment: A Progress Report*, 48 Fortune 102 (July 1952); Ruchames, *Race, Jobs and Politics*, 192 (1953); Hope, *Efforts to Eliminate Racial Discrimination in Industry—With Particular Reference to the South*, 23 J. of Neg. Educ. 262 (Summer 1954). Recent surveys have shown that large percentages of Southern workers favor nondiscriminatory employment requirements, one survey showing 48 percent. Ruchames, *supra*, p. 192. With increasing industrialization, the South is, more and more, experiencing and accepting nondiscriminatory and nonsegregated employment. Time magazine, *Industry—Through the Color Barrier*, p. 104 (March 22, 1954); see also Statement of November 11, 1953 by President Eisenhower announcing the ending of racial segregation of civilian workers at Navy shore establishments in Southern states.

Moreover, the past 5 years have seen widespread effort to minimize racial discriminations and tension in many other areas. In the fields of housing and urban redevelopment, the federal government (which underwrites over 25 billion dollars of home mortgages) now refuses home loan guarantees or insurance (V.A. or F.H.A.) for property on which racial restrictive covenants have been recorded since February 15, 1950; and racial discriminatory practices are now prohibited by law in 11 States. In addition, either by municipal ordinance or other action, or by resolution of the local housing authority, racial discriminatory practices in housing are forbidden in 24 cities, including such large centers of population as Baltimore, Md., Washington, D. C., Wilmington, Del., New York, Los Angeles, Boston, Cleveland, Philadelphia, Cincinnati, St. Paul, etc. More than 60 cities have established Human Relations Commissions; and at least 50 Southern municipalities have adopted anti-mask ordinances designed to curb Klan terrorism.

As the thinking of America focuses on the subject of school desegregation, this Court's decision is receiving more and more affirmations of support from civic, religious, veterans, parent-teachers, labor, business, educational, and a host of other types of organizations. It is particularly significant that practically every major religious denomination has vigorously urged compliance with both the letter and the spirit of integration.

Illustrative of the tone of such support is the announcement by the National Council of the Churches of Christ in the U.S.A., on May 19, 1954, urging all churches and individuals "to exert their influence and leadership to help the authorized agencies in the several communities to bring about a complete compliance with the decision of the Supreme Court." See also the National Council's Statement *The Churches and Segregation* (June 11, 1952) urging elimination of segregation and exclusion policies at all church-related, as well as public, schools. Similar views have been expressed by the Southern Baptist Convention, the Southern Presbyterian 94th General Assembly (1954), the Southern Methodist Church (including the Conferences in Florida, North Georgia, Louisiana, North Arkansas, Southwest Texas, etc.), the Southeastern Province of the Protestant Episcopal Church, the Catholic Committee of the South, Southern B'nai B'rith lodges, the Disciples of Christ, many Southern councils of the United Church Women, and other active religious denominations. See Southern Regional Council, *Schools in the South*, pp. 6-7 (June, 1954); *ibid.*, *New South*, vol. 9, no. 8 (Aug. 1954).

These pronouncements are not simply pious hopes. They reflect what is actually happening in America. Racial discrimination is being abandoned or destroyed in the armed forces, in professional societies, in the entertainment world, in schools and colleges, in churches, in industry, in government, indeed, almost everywhere. It merits noting that

only 6 years ago no Negro could hope to play baseball in the major leagues, while now Negro ballplayers are heroes to millions of sports enthusiasts. See, *e.g.*, Tallulah Bankhead, *What is so Rare as a Willie Mays*, Look Magazine, vol. 18, no. 19, p. 52 (Sept. 21, 1954); E. B. Henderson, *The Negro in Sports* (1949).

Yesterday's announcements that the Disciples of Christ 105th International Convention in Florida voted for non-segregation (*Washington Post & Times Herald*, p. 24M, Oct. 31, 1954), and that the Medical Society of Virginia voted to admit colored physicians to membership (*Washington Evening Star*, p. B-1, Nov. 1, 1954), are similar to hundreds of recent instances illustrating how widely race bars are being dropped by voluntary and private groups without legal compulsion to do so.

Literally thousands of schools, in the South and throughout the country, which were operated until recently on a segregated basis, now have integrated student bodies, and many of them already have integrated teaching staffs in the particular school.

White and Negro children are already sitting side by side in church-supported schools in Arkansas, Kentucky, Maryland, Missouri, North Carolina, Oklahoma, Tennessee, Texas, Virginia, West Virginia, and other areas where segregation was the rule prior to this Court's decisions of May 17, 1954. See, *e.g.*, Release, Sept. 13, 1954, National Catholic Welfare Conference News Service. Schools on numerous military reservations throughout the South have already been integrated, and no segregated school will be operated on any military reservation after September 1, 1955. *Integration in the Armed Services*, Progress Report of Civilian Assistant to the Secretary of Defense, pp. 2-3 (Aug. 31, 1954). And according to the Southern Regional Council's list (October 1954), at least 116 colleges and professional schools in Southern and border states, both public and private, which were formerly restricted to white

students, are now desegregated. Although we do not have precise data as to how many private non-Catholic schools below college level have race bars no more, we do know they number in the hundreds.

Thousands of public elementary and secondary schools, too, have recently been desegregated. Virtually every section in Missouri has some form of integration in its public schools. In Arizona and New Mexico, public school segregation is now a thing of the past. In West Virginia, more than 25 counties have already fully or partially integrated their public schools. In Texas, at least 10 municipal junior colleges formerly restricted to white students now admit Negro students. These are but samples of the widespread growth of racial integration in the schools of America. See N. Y. Times, pp. 1, 74 (Oct. 3, 1954); *Southern School News,* Vol. 1, Nos. 1 and 2 (Sept. 3 and Oct. 1, 1954).

In three of the cases here involved, the picture is even more encouraging.

In *No. 1, Brown* v. *Board of Education:* In September 1953 the Topeka School Board, which had no segregation at the secondary school level, adopted the policy of desegregating the elementary schools as rapidly as practicable, and immediately terminated segregation in two elementary school districts. In September 1954, the Topeka Board of Education ordered complete integration in 10, and partial integration in 2, additional elementary school districts. Thus, at present, 14 of the 19 elementary schools previously attended by white children now have integrated student bodies; five schools are attended solely by white children; and four schools are attended solely by colored children. The Superintendent of Schools, in his letter of Sept. 24, 1954, advising us that in January 1955 he will announce the third step toward integration, stated as follows: "It is my belief that segregation will be terminated in this city

before the Supreme Court acts indicating the manner in which it should be accomplished."

In *No. 4, Bolling* v. *Sharpe:* Shortly after this Court's decision of May 17, 1954, the District of Columbia Board of Education adopted a policy of complete nonsegregation and the Superintendent of Schools initiated a program to implement that policy.

Up to the date of filing this Brief, most of the D. C. public schools have been wholly or partially desegregated by virtue of (a) transferring some 3000 Negro children from overcrowded schools chiefly to schools serving the areas where they live; (b) applying new non-racial school boundaries to all students (some 12,000) who in September 1954 were new to the school system; (c) permitting those who had changed their residences to another school zone to transfer to the school serving that zone; and (d) permitting approximately 1000 additional junior and senior high school students and approximately 900 other elementary school pupils to transfer to schools within the boundaries of which they live. Racial exclusion has been abandoned for all evening schools and for the two teachers colleges, and it is proposed to merge these colleges as soon as administrative details and facilities can be arranged. Teachers are being examined and assigned without regard to race.

In addition, all children still remaining in schools which are outside the boundaries within which they live may either remain in their present school until graduation or file applications for transfer to a school serving the school zone in which they live. The Superintendent of Schools has announced that these applications will be made effective either in February or September 1955; that children living within the school boundaries will, after September 1955, have priority, if the school is overcrowded, over those who live outside the boundaries; that all students gradu-

ating from junior high school in February 1955 will go to the high school serving the zone within which they live; and that in September 1955 the new boundaries will be applicable to all students except those remaining in a school until they graduate. The D. C. public school system serves over 100,000 students, 60 percent of whom are of Negro ancestry.[6]

In *No. 5, Gebhart* v. *Belton:* The two schools involved (Claymont high school and Hockessin elementary school) have been integrated since 1952. In addition, under the policy recently adopted by the Delaware State Board of Education which virtually incorporates the proposals we here urge (see footnote 2, *supra*), many other Delaware schools have already been integrated, in varying patterns and, except at Milford, without difficulty. Thus, in Newark, junior and senior high schools have been integrated. In Newcastle, integration has been smoothly introduced for first year children and all high school grades. In Wilmington, integration began in the summer school session; in September, integration was smoothly accomplished at the elementary school level where 67 percent of the students are now enrolled in schools attended by both white and colored children while the remainder attend schools which serve all-white or all-colored residential areas (no qualified Negro student sought transfer to any secondary school serving white children); and racial restrictions were removed from evening schools and all activities of extended services. See *Southern School News*, vol. 1, Nos. 1 and 2 (Sept. 3 and Oct. 1, 1954); Wilmington *Journal—Every Evening*, p. 1 (June 22. 1954); *ibid.*, pp. 1, 4 (Sept. 21, 1954).

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[6] *Washington Post & Times Herald*, p. 7M (May 23, 1954); p. 17 (May 26, 1954); p. 19 (June 10, 1954); p. 18 (June 24, 1954); p. 1 (July 2, 1954); p. 20M (Sept. 12, 1954); p. 1 (Sept. 14, 1954); p. 18 (Sept. 16, 1954); p. 1 (Sept. 17, 1954); pp. 1, 18 (Sept. 22, 1954); p. 19 (Sept. 25, 1954); *Southern School News, supra*, Nos. 1 and 2.

The recent highly publicized incidents, such as the picketing and threats which stopped or reversed integration plans of the local school boards at Milford, Dela., and White Sulphur Springs, W. Va., and the brief flurry of walkouts and truancy by a small proportion of the students in Baltimore, Md., and Washington, D. C., do not undermine our contention that "gradualism" is unnecessary to smooth integration. Those incidents were isolated instances of rowdyism, largely inspired by professional hate mongers. When compared to the overall picture of effective transition in the many areas where desegregation is taking place, these incidents, despite their notoriety, shrink to their proper miniscule proportion.[7]

Moreover, as shown in the newspaper reports from those localities, the vast majority of the local citizenry disavowed and deplored such defiance of law and order *e.g.*, see daily issues during October of: Wilmington *Journal—Every Evening*, Wilmington *Morning News*, *Baltimore Sun*, *Washington Post & Times Herald*, Washington *Evening Star*, etc.).

Indeed, it can be stated that the current atmosphere of uncertainty as to the nature of this Court's decree concerning the methods for desegregation of the public schools has undoubtedly been a large factor in encouraging the climate of overt hostility and active resistance to desegregation which stimulated those incidents. But after this Court's decrees outline the methods of compliance with the Constitution, accommodation and acceptance, even though

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[7] The Wilmington *Journal-Every Evening* appraised the Milford, Delaware outburst as "nothing more than isolated incidents of a few irresponsible persons getting briefly out of hand" (Editorial, Oct. 14, 1954), while the Washington, D. C. walkout consisted almost entirely of "teen-agers on a lark. It did not smack of real racial bigotry." *Washington Post & Times Herald*, p. 8, col. 2 (Oct. 19, 1954).

sometimes reluctant, will rapidly replace the present uncertainty and resistance.[8]

As actual experience has shown, "The likelihood of desegregation being accompanied by active resistance or violence is not directly dependent upon the degree of expressed racial prejudice among the whites prior to the desegregation. Prejudiced whites accommodate as well to a changed social situation as do less prejudiced whites. There is also some evidence that a change in the social situation brought about by desegregation tends to decrease the intensity of expressed racial prejudice." Clark, *Desegregation: An Appraisal of the Evidence*, 9 J. of Soc. Issues, No. 4, p. 47 (1953). These findings are, indeed, buttressed by the survey of attitudes on desegregation conducted under the auspices of the Attorney General of Florida which found:

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[8] *Washington Sunday Star*, p. A-2, cols. 2-4 (Oct. 3, 1954). In Clark, *Desegregation: An Appraisal of the Evidence*, 9 J. of Soc. Issues, No. 4, pp. 53-54 (1953), the key principles are stated as follows:

"VII. Active resistance, and sometimes violence, though rare, are associated with desegregation under the following conditions:

A. Ambiguous or inconsistent policy;
B. Ineffective policy action;
C. Conflict between competing governmental authority or officials.

* * * * * * * * * *

"VIII. The accomplishment of efficient desegregation with a minimum of social disturbance depends upon;

A. A clear and unequivocal statement of policy by leaders with prestige and other authorities;
B. Firm enforcement of the changed policy by authorities and persistence in the execution of this policy in the face of initial resistance;
C. A willingness to deal with violations, attempted violations, and incitement to violations by a resort to the law and strong enforcement action;
D. A refusal of the authorities to resort to, engage in or tolerate subterfuges, gerrymandering or other devices for evading the principles and the fact of desegregation;
E. An appeal to the individuals concerned in terms of their religious principles of brotherhood and their acceptance of the American traditions of fair play and equal justice."

"While the majority of white persons answering opposed the decision, it is also true that a large majority indicated they were willing to do what the courts and school officials decided." (Florida Brief, pp. 24, 108)

"29. A large majority of white principals and supervisors in all regions indicate that they would comply with the decision regardless of personal feelings but the percentage varies from 76% in Region VII to approximately 94% in Regions VI and VIII." (*Ibid.*, p. 33).

In any event, however, the possibility of occasional local friction does not provide a relevant legal basis for depriving law abiding persons of their legal rights. *Buchanan* v. *Warley*, 245 U.S. 60, 80-81 (1917); *Mitchell* v. *United States*, 313 U.S. 80, 97 (1941); *Shelley* v. *Kraemer*, 334 U.S. 1, 21 (1948). This Court has sturdily refused to permit the standards of the Constitution to be set at the larrikinalian level demanded by local ruffians and Ku-Klux-Klan-like demagogues. See *Moore* v. *Dempsey*, 261 U.S. 86 (1923) (mob violence); *Cantwell* v. *Connecticut*, 310 U.S. 296, 303 (1940) (street argument); *Hague* v. *C.I.O.*, 307 U.S. 496, 516 (1939) (anticipated public disorder, but no showing of inability to control it.) Also *Cf. Terminiello* v. *Chicago*, 337 U.S. 1 (1949) (speech before riotous and turbulent crowd); *Kunz* v. *New York*, 340 U.S. 290, 296 (1951) (speech likely to stir strife); *Feiner* v. *New York*, 340 U.S. 315 (1951) (speech which actually incited crowd). This Court was not frightened by threats of large scale violence nor deemed it necessary to espouse a formal policy of "gradualism", when it ordered the end of racial discrimination, whether in the form of segregation or otherwise, in voting, interstate travel, land ownership and occupancy, employment, public accommodations, graduate education, jury service, and other areas of daily life.[9]

[9] See numerous cases cited in our Brief for AVC on the previous reargument (1953 Term), p. 16, ftnts. 7-13. Some instances of awful predictions of dire violence which never materialized can

Throughout this experience in desegregation, the phobias of predicted violence proved to be wraiths, fantasies and myths. Here and there, one or a few hoodlums created localized tensions and anxieties. But the vast majority of people accommodated themselves to and accepted the change in their pattern of racial relations which, this Court decreed, was required by the Constitution. See Comment, *Racial Violence and Civil Rights Law Enforcement*, 18 U. of Chi. L. Rev. 769 (1951).

The unfortunate truth is that considerable time, perhaps years, may elapse before all the public schools are fully integrated. Residential segregation alone will greatly minimize the effect of this Court's rulings in these cases. There are multitudes of areas inhabited almost entirely by white persons or almost entirely by colored persons. The student body of the schools in those areas will have the same hue as the residents of the neighborhood.

Moreover, the lag in the law and the inhibiting effect of the mores and extra-legal pressures in particular communities, when added to the accumulated racial patterns of residence, and other factors, will envelope the process of desegregation with ample "gradualism". *Cf.* Ashmore, *The Negro and the Schools*, pp. 134-139 (1954); Leflar and Davis, *Segregation in the Public Schools—1953*, 67 Harv. L. Rev. 377, 404-420 (January 1954); Frank, *Can Courts Erase the Color Line?*, 21 J. of Negro Educ. 304 (1952).

Whatever may be one's thoughts as to the extent of time which may be desirable, from an administrator's standpoint, for adjustment to a non-segregated system of public education, this Court need not and ought not water down the equal protection guarantee of the Constitution through the formal espousal of a legal doctrine of "gradualism".

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be seen in the brief for the State of Virginia (pp. 14, 18-20) in *Morgan* v. *Virginia*, 328 U.S. 373 (1945 Term, No. 704), in the *amicus* brief filed by the Attorneys General of eleven States (p. 9) and in the brief for the University of Texas Law School (p. 175) in *Sweatt* v. *Painter*, 339 U.S. 629 (1949 Term, No. 44), and in the *amicus* brief by Rep. Sam Hobbs of Alabama (p. 5) in *Henderson* v. *United States*, 339 U.S. 816 (1949 Term, No. 25).

QUESTION 5

"5. On the assumption on which questions 4(a) and (b) are based, and assuming further that this Court will exercise its equity powers to the end described in question 4(b),

(a) should this Court formulate detailed decrees in these cases;

(b) if so, what specific issues should the decrees reach;

(c) should this Court appoint a special master to hear evidence with a view to recommending specific terms for such decrees;

(d) should this Court remand to the courts of first instance with directions to frame decrees in these cases, and if so what general directions should the decrees of this Court include and what procedures should the courts of first instance follow in arriving at the specific terms of more detailed decrees?"

THE TERMS OF THE DECREES WHICH WE SUGGEST

We have indicated above our belief that this Court should not undertake to encompass in its decree all conceivable local conditions and educational problems or to formulate a decree attempting to foresee and meet every possible contingency concerning the many individuals and circumstances involved in readjusting school districts, educational methods, patterns of pupil attendance, the assignment of teachers, etc. to meet constitutional standards. Nor should this Court do so vicariously through a special master. Such problems, to the extent that they are submitted to the judicial ken, are properly the initial concern of courts of first instance. Moreover, those courts cannot deal with such problems in identical manner. Differences in facts and unforeseen circumstances may compel variations in both procedure and solution.

Nevertheless, the courts of first instance should not be left entirely at large. Pursuant to the views expressed above, we urge that this Court remand these cases to the courts of first instance with the following directions:

(a) That the courts of first instance order and enjoin the respective boards of education:

(1) to admit and educate any applicant (if qualified on the basis of, and subject to, proper scholastic criteria which take no regard of his race or ancestry, including normal geographic school boundaries where such boundaries are prescribed) in any school in which any other person similarly situated, but without regard to race, color, or ancestry, would be admitted and educated; the board may, if it wishes, choose to comply with this requirement by assigning children to schools in accordance with normal geographic school boundaries which are based on proximity of residence and accessibility to the school and not on race, color or ancestry;

(2) as to any student who will thereafter be new to a particular school, to assign him to a school on the basis of normal residential boundaries not based on race or color, or, if no boundaries are prescribed, on the basis of reasonable criteria which do not include race or color; where no boundaries are prescribed, the board may, if it wishes, permit the student to choose which school he will attend, but shall not require him to file an application as a prerequisite to obtaining unsegregated education;

(3) to refrain, in the administration of their respective schools systems, from making any distinction, or providing any difference in treatment or education, solely on the basis of race, color, or ancestry, with respect to any student or other persons; and

(4) to comply with the above provisions not later than the beginning of the school term next following the issuance of this Court's decision.

(b) That the court of first instance:

(1) shall retain jurisdiction of the cases for such time as that court deems necessary to deal, upon motion by either side, with any special problems that may

arise in complying with the provisions mentioned above;

(2) may allow such additional time to the respective board of education, but not in excess of one school term at any one time, as the board of education on the basis of unusual conditions involving technical or administrative difficulties then existing, proves, by substantial and probative evidence at open hearings before the court, is needed by the board to effectuate compliance with this Court's decree; and

(3) shall not consider opposition and hostility by part of the community to desegregation of public education as constituting in themselves sufficient basis for delaying compliance with this Court's decree.

If the above directives are included in this Court's decree, we think that the court of first instance should be left free, subject to appellate review of any error committed, to adopt whatever procedures it deems wise in prescribing such additional specific terms, not inconsistent with this Court's decree, as may be necessary in the particular case to provide equal, unsegregated education to each person who desires it.

CONCLUSION

In view of the advanced status of desegregation in Kansas, the District of Columbia, and Delaware, we assume that in the cases from those areas (Nos. 1, 4, 5), the school authorities would have no objection to decrees containing the terms suggested above and effective September, 1955.

No different treatment is required, nor should be made, either for the other two cases now before this Court or for any other public school desegregation situations that we are aware of.

It is significant that although the appellees in the Virginia case stated that racial segregation was designed to prevent violence and reduce resentment, they frankly admitted that "The passage of time has removed violence

and substantially removed resentment in Virginia." Brief for Appellees, No. 191, Oct. Term, 1952, p. 17.

In states such as South Carolina, Georgia, Mississippi, and Alabama, and some parts of a few other states, integration of the public schools will involve a greater emotional adjustment. But we believe that the people of these areas can and will make that adjustment much easier than some of their present political leaders give them credit for.[10]

The events of World War II and its aftermaths have in the past several years brought about a vast reorientation of the community attitudes which formerly buttressed racial segregation. More and more, the people of the South are striving to discard the discriminations which grew from previous prejudices. In ever growing degree it is apparent that they would travel even faster toward that objective as the shackles of legal prohibitions against their voluntary association are removed.

Most of the people of the South respect the Constitution. They will comply with firm directives embodied in decrees of this Court. The more positive the ruling, the greater will be its acceptance. We believe that the future course of desegregation in the South will substantiate the experience of public school desegregation in New Jersey: ". . . that the best way to integrate is to do it." Bustard, *supra*, 21 J. of N. Ed. 275, 285.

AMERICAN VETERANS COMMITTEE, INC.,
Amicus Curiae.

By PHINEAS INDRITZ,
National Counsel,
American Veterans Committee, Inc.

[10] Compare the observation in *Freedom to Serve*, *supra*, p. 44: "Integration of the two races at work, in school, and in living quarters did not present insurmountable difficulties. . . . The enlisted men were far more ready for integration than the officers had believed." The same phenomenon was observed when white students greeted Negro students after the *Sweatt* and *McLaurin* decisions opened the doors of the Universities, and is now being seen in the vast majority of the elementary and secondary schools which have recently been desegregated.

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Supreme Court Of the United States

October Term, 1954

NUMBER 2

HARRY BRIGGS, Jr., et al., Appellants,

v.

R. W. ELLIOTT et al.

Motion of Louis L. Brown and Robert W. Wesley for leave to file brief *Amicus Curiae* in the Supreme Court of the United States, *pro interesse suo*.

LOUIS L. BROWN
Fort Valley, Georgia
and
ROBERT W. WESLEY
Macon, Georgia
Attorneys at Law

SUPREME COURT OF THE UNITED STATES

FILE NUMBER_____

HARRY BRIGGS, Jr., et al.,
Appellants

v.

R. W. ELLIOTT et al. (No. 2.)

MOTION FOR LEAVE TO FILE BRIEF *AMICUS CURIAE*

We, the undersigned attorneys at law, move for leave to file a brief *amicus curiae*.

The nature of our interest, concisely stated, is as follows: *pro interesse suo*, to wit: a portion of the livelihood of the last one of us whose names are signed below, is derived from compensation received by his spouse as Principal of Pearl Stephens Elementary School, Macon, Georgia, operated by the Bibb County Board of Education, which functions under a charter granted by the Legislature of the State of Georgia on August 23, 1872. See Public Laws of Georgia for 1872. (This charter antedates the charter of the State Board of Education of Georgia.)

The fact given above is also set forth as evidence of intent with which the Fourteenth Amendment to the Constitution of the United States was adopted in the year 1868; and because of that fact, the way in which the Charter of the above-mentioned Board of Education of Bibb County, Georgia, was granted, and the circumstances under which it was granted, become relevant to the argument on Questions 4 and 5 previously propounded by your Honorable Court and requested to be reargued.

SUPREME COURT OF THE UNITED STATES

FILE NUMBER_____

HARRY BRIGGS, Jr., et al.,
Appellants

v.

R. W. ELLIOTT et al. (No. 2.)

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The argument we desire to present in the brief *amicus curiae* is for an affirmative answer to Question 4 (b), with the related argument for a grant of discretion to duly constituted local authorities, in order to carry out the terms of such affirmative answer; and an argument for a similar answer to Question 5 (c) above. The brief *amicus curiae* also sets forth further argument on the importance of the moral issue involved, which we are of opinion becomes relevant to the fact of which your Most Honorable Court has taken cognizance, that local conditions are different.

SIGNED Louis L. Brown
Attorney at Law
ADDRESS Fort Valley, Georgia

SIGNED Robert W. Wesley
Attorney at Law
ADDRESS Macon, Georgia

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1954

No. 4

SPOTTSWOOD THOMAS BOLLING, ET AL., *Petitioners*,

v.

C. MELVIN SHARPE, ET AL., *Respondents*.

MOTION OF THE FEDERATION OF CITIZENS ASSOCIATIONS OF THE DISTRICT OF COLUMBIA FOR PERMISSION TO FILE BRIEF AS AMICUS CURIAE

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v.

C. MELVIN SHARPE, ET AL., *Respondents*.

MOTION FOR PERMISSION TO FILE BRIEF AS AMICUS CURIAE

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

The undersigned counsel for and on behalf of the Federation of Citizens Associations of the District of Columbia (hereinafter referred to as the Federation), respectfully move this Honorable Court for permission to file the accompanying brief as amicus curiae.

The Federation is a corporate organization; one of its purposes, as stated in its Charter, is to obtain the expression of the general public sentiment upon matters of special interest to all citizens of the District of Columbia

and to secure and make effective their united actions. The Federation consists of duly elected delegates from fifty-seven neighborhood citizens associations, the territorial jurisdictions of which cover almost all of the District of Columbia. The membership of the individual associations is composed of white persons who are, to a large extent, parents of school children affected by the Court's decision of May 17, 1954 and by the plan of the Board of Education. In the aggregate the members and their children number many thousands. The matters embraced in Questions 4 and 5 propounded by the Court have been discussed and considered extensively at meetings of the fifty-seven associations and the Federation.

The reasons for the Federation's desire to submit the brief as amicus curiae, which is tendered herewith, are as follows:

1. For many years the Federation has concurred with the Board of Education and has supported it in the maintenance of a dual public school system in accordance with the pertinent Acts of Congress. The Court's decision of May 17, 1954 declared in effect that such dual system is unconstitutional. So far as the Federation has been able to learn, the Board of Education has accepted the Court's decision and has determined to eliminate segregation, without awaiting the further decision and degree of the Court and without obtaining legislation from Congress to replace the Acts of Congress under which the Board theretofore acted, which the Court has held unconstitutional. The Federation does not oppose desegregation but holds that the plan which the Board of Education has adopted involves unnecessary speed of action and many hardships upon the school children, in violation of their rights as citizens, which rights the Court apparently has fully recognized in its opinion in this case and the opinion in the four related cases. Several provisions and requirements of the plan are in reality legislation which, it is believed, the Board has no authority to promulgate. In

doing this, the Board of Education is making a calculated attempt to circumvent the exclusive right, power and duty of Congress to deal with this problem by legislation.

2. Because of local conditions in the District of Columbia, the Federation desires to suggest and urge that the terms of the decree to be entered by the Court should adequately protect the rights of *all* children of school age, and assure that no child of either color will be compelled, under penalty, to attend any specified school where the students of his own color constitute a disproportionate small minority. Also, the parents should be protected from the fines and or imprisonments provided by the District of Columbia Code in that connection.

3. From all available information, the Federation understands that the petitioners, as well as the respondents, expect to take the general position in their final briefs, that integration of the District public schools is substantially an accomplished fact, and that the pending questions propounded by the Court are moot, or practically so. True, a plan of integrating the public schools was put into effect within a short time after May 17, 1954, and the plan has progressed to the point where the major part of it is in effect. In its brief, the Federation desires to call the Court's attention to some of the mandatory and compulsory requirements which constitute a part of that plan. Those compulsory provisions, it is believed, are most unreasonable and, in the light of the Court's opinion, they appear to be of doubtful validity to say the least. The Court has recognized and has emphasized the damaging effect upon colored school children which is produced by compulsory segregation of them. That proposition, like most others in life, has two sides. It is the desire of the Federation to deal briefly with the other side and to demonstrate why the terms of the decree should adequately protect children of *all* races against unnecessary damag-

ing effects which will certainly arise as the result of compulsory integration if it be applied without any flexibility. As indicated previously, the Federation believes that coverage of this matter in the briefs of the petitioners and respondents is not contemplated. The importance of the matter would indicate a desirability for the Court to receive suggestions such as the Federation's brief will attempt to present.

The Federation respectfully and emphatically desires to point out to this Honorable Court that the case of the District of Columbia schools, as it stands, is defective through absence of a proper, not to say indispensable, party. One group of citizens is learnedly and expertly represented by counsel. The group of which the Federation is representative is thus far without a voice of its own. The Board of Education and its worthy counsel, of necessity, cannot speak the views of this group, as they necessarily differ in some vital respects from those common to all. Without the Federation this Court will not hear the voice of this great body of citizens of the District of Columbia.

Respectfully submitted,

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